

**1993**

**SESSION LAWS**

OF THE

**STATE OF WASHINGTON**

REGULAR SESSION  
FIFTY-THIRD LEGISLATURE  
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DENNIS W. COOPER  
Code Reviser

## WASHINGTON SESSION LAWS GENERAL INFORMATION

### I. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
- (i) a temporary pamphlet edition consisting of a series of one or more paper bound pamphlets, which are published as soon as possible following the session, at random dates as accumulated; followed by
  - (ii) a permanent bound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating code sections affected.
- (b) *Temporary pamphlet edition—where and how obtained—price.* The temporary session laws may be ordered from the Statute Law Committee, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552 at \$5.40 per set (5.00 plus \$.40 for state and local sales tax of 7.9%). All orders must be accompanied by payment.
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### 2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

- (a) In amendatory sections
- (i) underlined matter is new matter.
  - (ii) ~~deleted matter is ((lined out and bracketed between double parentheses)).~~
- (b) Complete new sections are prefaced by the words NEW SECTION.

### 3. PARTIAL VETOES

- (a) Vetoes matter is *printed in bold italics*.
- (b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

### 4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

### 5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 1993 regular session to be July 25, 1993 (midnight July 24th). The pertinent date for the Laws of the 1993 1st special session is August 5, 1993 (midnight August 4th).
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date, take effect upon that date.

### 6. INDEX AND TABLES

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**CHAPTER 1**

[Initiative 573]

**TERM LIMITS FOR ELECTED OFFICIALS****Effective Date:** 12/3/92

AN ACT Relating to ballot access for elected officials; adding a new section to chapter 43.01 RCW; adding a new section to chapter 44.04 RCW; adding new sections to chapter 29.68 RCW; adding a new section to chapter 29.51 RCW; adding a new section to chapter 29.15 RCW; adding a new section to chapter 7.16 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The people of the state of Washington find that:

(1) The people will best be served by citizen legislators who are subject to a reasonable degree of rotation in office;

(2) Entrenched incumbents have become indifferent to the conditions and concerns of the people;

(3) Entrenched incumbents have an inordinate advantage in elections because of their control of campaign finance laws and gerrymandering of electoral districts;

(4) Entrenched incumbency has discouraged qualified citizens from seeking public office;

(5) Entrenched incumbents have become preoccupied with their own reelection and devote more effort to campaigning than to making legislative decisions for the benefit of the people;

(6) Entrenched incumbents have become closely aligned with special interest groups who provide contributions and support for their reelection campaigns, give entrenched incumbents special favors, and lobby office holders for special interest legislation to the detriment of the people of this state, and may create corruption or the appearance of corruption of the legislative system;

(7) The people of Washington have a compelling interest in preventing the self-perpetuating monopoly of elective office by a dynastic ruling class.

The people of the state of Washington therefore adopt this act to limit ballot access of candidates for state and federal elections.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.01 RCW to read as follows:

(1) No person is eligible to appear on the ballot or file a declaration of candidacy for governor who, by the end of the then current term of office will have served, or but for resignation would have served, as governor during eight of the previous fourteen years.

(2) No person is eligible to appear on the ballot or file a declaration of candidacy for lieutenant governor who, by the end of the then current term of office will have served, or but for resignation would have served, as lieutenant governor during eight of the previous fourteen years.

NEW SECTION. Sec. 3. A new section is added to chapter 44.04 RCW to read as follows:

(1) No person is eligible to appear on the ballot or file a declaration of candidacy for the house of representatives of the legislature who, by the end of the then current term of office will have served, or but for resignation would have served, as a member of the house of representatives of the legislature during six of the previous twelve years.

(2) No person is eligible to appear on the ballot or file a declaration of candidacy for the senate of the legislature who, by the end of the then current term of office will have served, or but for resignation would have served, as a member of the senate of the legislature during eight of the previous fourteen years.

(3) No person is eligible to appear on the ballot or file a declaration of candidacy for the legislature who has served as a member of the legislature for fourteen of the previous twenty years.

NEW SECTION. Sec. 4. A new section is added to chapter 29.68 RCW to read as follows:

No person is eligible to appear on the ballot or file a declaration of candidacy for the United States house of representatives who, by the end of the then current term of office will have served, or but for resignation would have served, as a member of the United States house of representatives during six of the previous twelve years.

NEW SECTION. Sec. 5. A new section is added to chapter 29.68 RCW to read as follows:

No person is eligible to appear on the ballot or file a declaration of candidacy for the United States senate who, by the end of the then current term of office will have served, or but for resignation would have served, as a member of the United States senate during twelve of the previous eighteen years.

NEW SECTION. Sec. 6. A new section is added to chapter 29.51 RCW to read as follows:

Nothing in sections 2 through 5 of this act prohibits a qualified voter of this state from casting a ballot for any person by writing the name of that person on the ballot in accordance with RCW 29.51.170 or from having such a ballot counted or tabulated, nor does anything in sections 2 through 5 of this act prohibit a person from standing or campaigning for an elective office by means of a write-in campaign.

NEW SECTION. Sec. 7. A new section is added to chapter 29.15 RCW to read as follows:

(1) The secretary of state or other election official authorized by law shall not accept or verify the signatures, nor accept a declaration of candidacy or a nomination paper, from or on behalf of a person who, by reason of sections 2 through 5 of this act, is ineligible for the office, nor allow the person's name to appear on the ballot.

(2) No terms or years served in office before November 3, 1992, may be used to determine eligibility to appear on the ballot.

NEW SECTION. **Sec. 8.** A new section is added to chapter 29.68 RCW to read as follows:

Sections 4 and 5 of this act, regarding candidates for federal legislative office, are not effective until nine states other than Washington have passed laws limiting ballot access or terms of federal legislative office, or both, based on length of service in federal legislative office.

NEW SECTION. **Sec. 9.** A new section is added to chapter 7.16 RCW to read as follows:

Any resident of this state may bring suit to enforce sections 2 through 8 of this act. If the person prevails, the court shall award the person reasonable attorney's fees and costs of suit.

NEW SECTION. **Sec. 10.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Originally filed in Office of Secretary of State January 14, 1992.

Approved by the People of the State of Washington in the General Election on November 3, 1992.

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**CHAPTER 2**

[Initiative 134]

**FAIR CAMPAIGN PRACTICES ACT**

**Effective Date: 12/3/92**

AN ACT Relating to the regulation of political contributions and campaign expenditures; amending RCW 42.17.095, 42.17.125, 42.17.510, 41.04.230, 42.17.180, 42.17.390, and 42.17.240; adding new sections to chapter 42.17 RCW; creating new sections; repealing RCW 42.17.243; and prescribing penalties.

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

**PART I**

**FINDINGS AND INTENT**

NEW SECTION. **Sec. 1. FINDINGS.** The people of the state of Washington find and declare that:

(1) The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

(2) Rapidly increasing political campaign costs have led many candidates to raise larger percentages of money from special interests with a specific financial stake in matters before state government. This has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions.

(3) Candidates are raising less money in small contributions from individuals and more money from special interests. This has created the public perception that individuals have an insignificant role to play in the political process.

NEW SECTION. Sec. 2. INTENT. By limiting campaign contributions, the people intend to:

- (1) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;
- (2) Reduce the influence of large organizational contributors; and
- (3) Restore public trust in governmental institutions and the electoral process.

## PART II DEFINITIONS

NEW SECTION. Sec. 3. DEFINITIONS. The definitions of RCW 42.17.020 apply to sections 4 through 19 of this act except as modified by this section. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 4 through 19 of this act.

(1) "Authorized committee" means the political committee authorized by a candidate, or by the state official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or state official.

(2) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29.24 RCW; or

(b) The governing body of the state organization of a major political party, as defined in RCW 29.01.090, which is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party.

(3) "Candidate" means an individual seeking nomination for election or seeking election to a state office. An individual is deemed to be seeking nomination for election or seeking election when the individual first:

(a) Announces publicly or files for the office;

(b) Purchases commercial advertising space or broadcast time to promote his or her candidacy;

(c) Receives contributions or makes expenditures for facilities with intent to promote his or her candidacy for the office; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (b) or (c) of this subsection.

(4) "Caucus of the state legislature" means the caucus of members of a major political party in the state house of representatives or in the state senate.

(5)(a) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between



political committees, or transfer of anything of value, including personal and professional services for less than full consideration.

(b) Subject to further definition by the commission, "contribution" does not include the following:

(i) Interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(v) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose primary business is that news medium, and that is not controlled by a candidate or political committee;

(vi) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates;

(vii) An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization;

(viii) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person and that are performed outside the individual's normal working hours; or

(ix) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus of the state legislature if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution.

(d) Sums paid for tickets to fund-raising events such as dinners and parties are contributions, except for the actual cost of the consumables furnished at the event.

(e) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or

their agents, is considered to be a contribution to such candidate or political committee.

(f) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or its authorized agent, is considered to be a contribution to the candidate or political committee.

(6) "Election" means a primary or a general or special election in which a candidate is on the ballot.

(7) "Election cycle" means the period beginning on the first day of December after the date of the last previous general election for the office that the candidate seeks and ending on November 30th after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on November 30th after the special election.

(8) "General election" means the election that results in the election of a person to a state office. It does not include a primary.

(9) "Immediate family" means a candidate's spouse, and any child, stepchild, grandchild, parent, stepparent, grandparent, brother, half-brother, sister, or half-sister of the candidate and the spouse of any such person and any child, stepchild, grandchild, parent, stepparent, grandparent, brother, half-brother, sister, or half-sister of the candidate's spouse and the spouse of any such person.

(10) "Independent expenditure" means an "expenditure" as defined in RCW 42.17.020 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(11)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purpose of the committee that the treasurer or candidate serves.

(c) A professional fund raiser is not an intermediary if the fund raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(12) "Person" includes:

(a) An individual;

(b) A partnership, limited partnership, public or private corporation, or joint venture;

(c) A nonprofit corporation, organization, or association, including but not limited to, a national, state, or local labor union or collective bargaining organization and a national, state, or local trade or professional association;

(d) A federal, state, or local governmental entity or agency, however constituted;

(e) A candidate, committee, political committee, bona fide political party, or executive committee thereof; and

(f) Any other organization or group of persons, however organized.

(13) "Primary" means the procedure for nominating a candidate to state office under chapter 29.18 or 29.21 RCW or any other primary for an election which uses, in large measure, the procedures established in chapter 29.18 or 29.21 RCW.

(14) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29.82.015 and ending thirty days after the recall election.

(15) "State legislative office" means the office of a member of the state house of representatives and the office of a member of the state senate.

(16) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(17) "State official" means a person who holds a state office.

### **PART III CONTRIBUTIONS**

**NEW SECTION. Sec. 4. CAMPAIGN CONTRIBUTION LIMITS.** (1) No person, other than a bona fide political party or a caucus of the state legislature, may make contributions to a candidate for a state legislative office that in the aggregate exceed five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed one thousand dollars

for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) No person, other than a bona fide political party or a caucus of the state legislature, may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, during a recall campaign that in the aggregate exceed five hundred dollars if for a state legislative office or one thousand dollars if for a state office other than a state legislative office.

(3)(a) Notwithstanding subsection (1) of this section, no bona fide political party or caucus of the state legislature may make contributions to a candidate during an election cycle that in the aggregate exceed (i) fifty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus of the state legislature or the governing body of a state organization, or (ii) twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed twenty-five cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus of the state legislature may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, during a recall campaign that in the aggregate exceed (i) fifty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus of the state legislature or the governing body of a state organization, or (ii) twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No state official against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of a state official may accept contributions from a county central committee or a legislative district committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(5) Notwithstanding subsections (1) through (4) of this section, no person other than an individual, bona fide political party, or caucus of the state legislature may make contributions reportable under this chapter to a caucus of the state legislature that in the aggregate exceed five hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed two thousand five hundred dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(6) For the purposes of sections 4 through 19 of this act, a contribution to the authorized political committee of a candidate, or of a state official against whom recall charges have been filed, is considered to be a contribution to the candidate or state official.

(7) A contribution received within the twelve-month period after a recall election concerning a state office is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(8) The contributions allowed by subsection (2) of this section are in addition to those allowed by subsection (1) of this section, and the contributions allowed by subsection (4) of this section are in addition to those allowed by subsection (3) of this section.

(9) Sections 4 through 19 of this act apply to a special election conducted to fill a vacancy in a state office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(10) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(11) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate, state official against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of a state official if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the state official.

(12) No person may accept contributions that exceed the contribution limitations provided in this section.

**NEW SECTION. Sec. 5. ATTRIBUTION AND AGGREGATION OF FAMILY CONTRIBUTIONS.** (1) Contributions by a husband and wife are considered separate contributions.

(2) Contributions by unemancipated children under eighteen years of age are considered contributions by their parents and are attributed proportionately to each parent. Fifty percent of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent.

**NEW SECTION. Sec. 6. ATTRIBUTION OF CONTRIBUTIONS BY CONTROLLED ENTITIES.** For purposes of this chapter:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.

**NEW SECTION. Sec. 7. ATTRIBUTION OF CONTRIBUTIONS.** All contributions made by a person or entity, either directly or indirectly, to a candidate, to a state official against whom recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official, or political committee. For the purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution being made to a certain candidate or state official. If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate or state official, the contribution is considered to be by both the original contributor and the conduit or intermediary.

**NEW SECTION. Sec. 8. LIMITATIONS ON EMPLOYERS OR LABOR ORGANIZATIONS.** (1) No employer or labor organization may increase the salary of an officer or employee, or give an emolument to an officer, employee, or other person or entity, with the intention that the increase in salary, or the emolument, or a part of it, be contributed or spent to support or oppose a candidate, state official against whom recall charges have been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The request is valid for no more than twelve months from the date it is made by the employee.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request.

**NEW SECTION. Sec. 9. CHANGING MONETARY LIMITS.** At the beginning of each even-numbered calendar year, the commission shall increase or decrease all dollar amounts in this chapter based on changes in economic conditions as reflected in the inflationary index used by the commission under RCW 42.17.370. The new dollar amounts established by the commission under this section shall be rounded off by the commission to amounts as judged most convenient for public understanding and so as to be within ten percent of the target amount equal to the base amount provided in this chapter multiplied by the increase in the inflationary index since the effective date of this act.

**NEW SECTION. Sec. 10. CONTRIBUTIONS FROM BEFORE EFFECTIVE DATE OF ACT.** Contributions made and received before the effective date of this act are considered to be contributions under sections 4 through 19 of this act. Monetary contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by the effective date of this act must be disposed of in accordance with RCW 42.17.095.

**NEW SECTION. Sec. 11. TIME LIMIT FOR STATE OFFICIAL TO SOLICIT OR ACCEPT CONTRIBUTIONS.** During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to

a public office fund, to a candidate or authorized committee, or to retire a campaign debt.

**NEW SECTION. Sec. 12. RESTRICTION ON LOANS.** (1) A loan is considered to be a contribution from the maker and the guarantor of the loan and is subject to the contribution limitations of this chapter.

(2) A loan to a candidate or the candidate committee must be by written agreement.

(3) The proceeds of a loan made to a candidate:

- (a) By a commercial lending institution;
- (b) Made in the regular course of business;
- (c) On the same terms ordinarily available to members of the public; and
- (d) That is secured or guaranteed,

are not subject to the contribution limits of this chapter.

**NEW SECTION. Sec. 13. CONTRIBUTIONS ON BEHALF OF ANOTHER.** (1) A person, other than an individual, may not be an intermediary or an agent for a contribution.

(2) An individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent.

**NEW SECTION. Sec. 14. CERTAIN CONTRIBUTIONS REQUIRED TO BE BY WRITTEN INSTRUMENT.** (1) An individual may not make a contribution of more than fifty dollars, other than an in-kind contribution, except by a written instrument containing the name of the donor and the name of the payee.

(2) A committee may not make a contribution, other than in-kind, except by a written instrument containing the name of the donor and the name of the payee.

**NEW SECTION. Sec. 15. SOLICITATION OF CONTRIBUTIONS BY GOVERNMENT EMPLOYEES.** (1) No state official or state official's agent may knowingly solicit, directly or indirectly, a contribution from an employee in the state official's agency.

(2) No state official or state employee may provide an advantage or disadvantage to an employee or applicant for employment in the classified civil service concerning the applicant's or employee's:

- (a) Employment;
- (b) Conditions of employment; or
- (c) Application for employment,

based on the employee's or applicant's contribution or promise to contribute or failure to make a contribution or contribute to a political party or committee.



**NEW SECTION. Sec. 16. AGENCY SHOP FEES AS CONTRIBUTIONS.**

A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

**NEW SECTION. Sec. 17. SOLICITATION FOR ENDORSEMENT FEES.**

A person or entity may not solicit from a candidate, committee, political party, or other person or entity money or other property as a condition or consideration for an endorsement, article, or other communication in the news media promoting or opposing a candidate, committee, or political party.

**NEW SECTION. Sec. 18. REIMBURSEMENT FOR CONTRIBUTIONS.**

A person or entity may not, directly or indirectly, reimburse another person or entity for a contribution to a candidate, committee, or political party.

**NEW SECTION. Sec. 19. PROHIBITION ON USE OF CONTRIBUTIONS FOR A DIFFERENT OFFICE.** (1) Except as provided in subsection (2) of this section, a candidate committee may not use or permit the use of contributions solicited for or received by the candidate committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general elections for which the candidate is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate committee may use or permit the use of contributions solicited for or received by the candidate committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization.

**Sec. 20. TRANSFER OF FUNDS—USE OF FUNDS FOR OTHER OFFICE ELIMINATED.** RCW 42.17.095 and 1982 c 147 s 8 are each amended to read as follows:

The surplus funds of a candidate, or of a political committee supporting or opposing a candidate, may only be disposed of in any one or more of the following ways:

(1) Return the surplus to a contributor in an amount not to exceed that contributor's original contribution;

(2) Transfer the surplus to the candidate's personal account as reimbursement for lost earnings incurred as a result of that candidate's election campaign. Such lost earnings shall be verifiable as unpaid salary or, when the candidate is not salaried, as an amount not to exceed income received by the candidate for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the candidate or the candidate's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090;

(3) Transfer the surplus to ~~((one or more candidates or to))~~ a political ~~((committee or))~~ party or to a caucus of the state legislature;

(4) Donate the surplus to a charitable organization registered in accordance with chapter 19.09 RCW;

(5) Transmit the surplus to the state treasurer for deposit in the general fund;  
or

(6) Hold the surplus in the campaign depository or depositories designated in accordance with RCW 42.17.050 for possible use in a future election campaign ~~((, for political activity, for community activity, or for nonreimbursed public office related expenses))~~ for the same office last sought by the candidate and report any such disposition in accordance with RCW 42.17.090: PROVIDED, That if the candidate subsequently announces or publicly files for office, information as appropriate is reported to the commission in accordance with RCW 42.17.040 through 42.17.090. If a subsequent office is not sought the surplus held shall be disposed of in accordance with the requirements of this section.

(7) No candidate or authorized committee may transfer funds to any other candidate or other political committee.

**Sec. 21. CANDIDATE PERSONAL FUND LOANS LIMITED.** RCW 42.17.125 and 1989 c 280 s 12 are each amended to read as follows:

Contributions received and reported in accordance with RCW 42.17.060 through 42.17.090 may only be transferred to the personal account of a candidate, or of a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for the committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individual's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the committee with written documentation as to the amount, date, and description of each expense, and the committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(3) Repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to RCW 42.17.090. However, contributions may not be used to reimburse a candidate for loans totaling more than three thousand dollars made by the candidate to the candidate's own authorized committee or campaign.

**PART IV  
INDEPENDENT EXPENDITURES**

**Sec. 22. INDEPENDENT EXPENDITURE ADVERTISING DISCLOSURE.** RCW 42.17.510 and 1984 c 216 s 1 are each amended to read as follows:

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name shall be unlawful. The party with which a candidate files shall be clearly identified in political advertising for partisan office.

(2) In addition to the materials required by subsection (1) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization must include the following statement on the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement is undertaken by a nonindividual, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions reportable under this chapter during the twelve-month period before the date of the advertisement.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

(a) Appear on each page or fold of the written communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process;

(c) Be in a printed or drawn box set apart from any other printed matter; and

(d) Be clearly spoken on any broadcast advertisement.

(4) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

~~((3))~~ (5) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

**NEW SECTION. Sec. 23. INDEPENDENT EXPENDITURE DISCLOSURE.** A person or entity other than a party organization making an independent expenditure by mailing one thousand or more identical or nearly identical cumulative pieces of political advertising in a single calendar year shall, within

two working days after the date of the mailing, file a statement disclosing the number of pieces in the mailing and an example of the mailed political advertising with the election officer of the county or residence for the candidate supported or opposed by the independent campaign expenditure or, in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure.

## PART V

### USE OF PUBLIC FUNDS OR OFFICE FOR POLITICAL PURPOSES

NEW SECTION. Sec. 24. Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or local office.

NEW SECTION. Sec. 25. FRANKING PRIVILEGE LIMITED. During the twelve-month period preceding the expiration of a state legislator's term in office, no incumbent to that office may mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature that is not in direct response to that constituent's request for a response or for information. However, one mailing mailed within thirty days after the start of a regular legislative session and one mailing mailed within sixty days after the end of a regular legislative session of identical newsletters to constituents are permitted. A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.17.130.

The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings, including but not limited to production costs, printing costs, and postage.

Sec. 26. STATE PAYROLL POLITICAL CHECK-OFF ELIMINATED. RCW 41.04.230 and 1988 c 107 s 19 are each amended to read as follows:

Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That the credit union is organized solely for public employees: AND PROVIDED FURTHER, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of general administration.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor or employee organization dues may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of RCW 41.06.150: PROVIDED, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor or employee organization: PROVIDED, FURTHER, That labor or employee organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

~~(7) ((Voluntary deductions for political committees duly registered with the public disclosure commission and/or the federal election commission: PROVIDED, That twenty-five or more officers or employees of a single agency or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same political committee.~~

(8)) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction.

## PART VI

### POLITICAL EXPENDITURE AND CONTRIBUTION REPORTING

**Sec. 27.** INDEPENDENT EXPENDITURE ANNUAL REPORTING. RCW 42.17.180 and 1990 c 139 s 4 are each amended to read as follows:

(1) Every employer of a lobbyist registered under this chapter during the preceding calendar year and every person other than an individual that made contributions aggregating to more than ten thousand dollars or independent expenditures aggregating to more than five hundred dollars during the preceding

calendar year shall file with the commission on or before (~~(March 31st)~~) the last day of February of each year a statement disclosing for the preceding calendar year the following information:

(a) The name of each state elected official and the name of each candidate for state office who was elected to the office and any member of the immediate family of those persons to whom the (~~(employer)~~) person reporting has paid any compensation in the amount of five hundred dollars or more during the preceding calendar year for personal employment or professional services, including professional services rendered by a corporation, partnership, joint venture, association, union, or other entity in which the person holds any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more, the value of the compensation in accordance with the reporting provisions set out in RCW 42.17.241(2), and the consideration given or performed in exchange for the compensation.

(b) The name of each state elected official, successful candidate for state office, or members of his immediate family to whom the (~~(lobbyist-employer)~~) person reporting made expenditures, directly or indirectly, either through a lobbyist or otherwise, the amount of the expenditures and the purpose for the expenditures. For the purposes of this subsection, the term expenditure shall not include any expenditure made by the employer in the ordinary course of business if the expenditure is not made for the purpose of influencing, honoring, or benefiting the elected official, successful candidate, or member of his immediate family, as an elected official or candidate.

(c) The total expenditures made by the (~~(employer)~~) person reporting for lobbying purposes, whether through or on behalf of a registered lobbyist or otherwise.

(d) All contributions made to a (~~(candidate for state office, to a)~~) political committee supporting or opposing a candidate for state office, or to a political committee supporting or opposing a state-wide ballot proposition. Such contributions shall be identified by the name and the address of the recipient and the aggregate amount contributed to each such recipient.

(e) The name and address of each registered lobbyist employed by the (~~(employer)~~) person reporting and the total expenditures made by (~~(the employer)~~) such person for each such lobbyist for lobbying purposes.

(f) The names, offices sought, and party affiliations of candidates for state offices supported or opposed by independent expenditures of the person reporting and the amount of each such expenditure.

(g) The identifying proposition number and a brief description of any state-wide ballot proposition supported or opposed by expenditures not reported under (d) of this subsection and the amount of each such expenditure.

(h) Such other information as the commission prescribes by rule.

(2)(a) Except as provided in (b) of this subsection, an employer of a lobbyist registered under this chapter shall file a special report with the commission if the employer makes a contribution or contributions aggregating more than one

hundred dollars in a calendar month to any one of the following: A candidate, elected official, officer or employee of an agency, or political committee. The report shall identify the date and amount of each such contribution and the name of the candidate, elected official, agency officer or employee, or political committee receiving the contribution or to be benefited by the contribution. The report shall be filed on a form prescribed by the commission and shall be filed within fifteen days after the last day of the calendar month during which the contribution was made.

(b) The provisions of (a) of this subsection do not apply to a contribution which is made through a registered lobbyist and reportable under RCW 42.17.170.

## PART VII PENALTIES

**Sec. 28. PENALTIES.** RCW 42.17.390 and 1973 c 1 s 39 are each amended to read as follows:

~~((b))~~ One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

~~((a))~~ (1) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

~~((b))~~ (2) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying: PROVIDED, HOWEVER, That imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this chapter.

~~((e))~~ (3) Any person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each such violation. However, a person or entity who violates section 4 of this act may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

~~((d))~~ (4) Any person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

~~((e))~~ (5) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

~~((f))~~ (6) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

**PART VIII  
PUBLIC DISCLOSURE COMMISSION**

**NEW SECTION. Sec. 29. COMMISSION AUDITS.** The commission shall conduct a sufficient number of audits and field investigations so as to provide a statistically valid finding regarding the degree of compliance with the provisions of this chapter by all required filers.

**PART IX  
GIFTS**

**NEW SECTION. Sec. 30. DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(2) "Gift" means a rendering of money, property, services, discount, loan forgiveness, payment of indebtedness, reimbursements from or payments by persons, other than the state of Washington or an agency or political subdivision thereof, for travel or anything else of value in excess of fifty dollars in return for which legal consideration of equal or greater value is not given and received but does not include:

(a) A contribution that is required to be reported under RCW 42.17.090 or 42.17.243;

(b) Informational material that is transferred for the purpose of informing the recipient about matters pertaining to official agency business, and that is not intended to financially benefit that recipient;

(c) A symbolic presentation that is not intended to financially benefit the recipient;

(d) An honorarium that is required to be reported under this chapter;

(e) Hosting in the form of entertainment, meals, or refreshments, the value of which does not exceed fifty dollars, furnished in connection with official appearances, official ceremonies, and occasions where official agency business is discussed;

(f) Gifts that are not used and that, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(g) Intrafamily gifts; or

(h) Gifts received in the normal course of private business or social interaction that are not related to public policy decisions or agency actions.

**Sec. 31. PUBLIC OFFICIAL ANNUAL REPORTING OF "GIFTS."** RCW 42.17.240 and 1989 c 158 s 1 are each amended to read as follows:

(1) Every elected official and every executive state officer shall after January 1st and before April 15th of each year file with the commission a statement of financial affairs for the preceding calendar year. However, any local elected official whose term of office expires immediately after December 31st shall file



the statement required to be filed by this section for the year that ended on that December 31st. In addition to and in conjunction with the statement of financial affairs, every official and officer shall file a statement describing any gifts received during the preceding calendar year.

(2) Every candidate shall within two weeks of becoming a candidate file with the commission a statement of financial affairs for the preceding twelve months.

(3) Every person appointed to a vacancy in an elective office or executive state officer position shall within two weeks of being so appointed file with the commission a statement of financial affairs for the preceding twelve months.

(4) A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

(5) No individual may be required to file more than once in any calendar year.

(6) Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

(7) For the purposes of this section, the term "executive state officer" includes those listed in RCW 42.17.2401.

(8) This section does not apply to incumbents or candidates for a federal office or the office of precinct committee officer.

NEW SECTION. **Sec. 32. LOBBYIST NOTIFICATION OF GIFTS.** When a listing or a report of contributions is made to the commission under RCW 42.17.170(2)(c), a copy of the listing or report must be given to the candidate, elected official, professional staff member of the legislature, or officer or employee of an agency, or a political committee supporting or opposing a ballot proposition named in the listing or report.

## PART X MISCELLANEOUS

NEW SECTION. **Sec. 33. CODIFICATION DIRECTIONS.** (1) Sections 1 through 19 of this act are each added to chapter 42.17 RCW as a subchapter and codified with the subchapter heading of "CAMPAIGN CONTRIBUTION LIMITATIONS."

(2) Sections 23 through 25, 29, 30, and 32 of this act are each added to chapter 42.17 RCW.

NEW SECTION. **Sec. 34. CAPTIONS.** Section captions and part headings used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 35. REPEALER.** RCW 42.17.243 and 1977 ex.s. c 336 s 5 are each repealed.

NEW SECTION. **Sec. 36.** **SHORT TITLE.** This act may be known and cited as the Fair Campaign Practices Act.

Originally filed in Office of Secretary of State June 12, 1991.

Approved by the People of the State of Washington in the General Election on November 3, 1992.

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**CHAPTER 3**

[Senate Bill 5000]

**BASIC HEALTH PLAN—SUNSET TERMINATION REPEALED**

**Effective Date:** January 27, 1993

AN ACT Relating to repealing the sunset termination of the basic health plan; repealing RCW 43.131.355 and 43.131.356; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The following acts or parts of acts are each repealed:

- (1) RCW 43.131.355 and 1987 1st ex.s. c 5 s 24; and
- (2) RCW 43.131.356 and 1987 1st ex.s. c 5 s 25.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate January 14, 1993.

Passed the House January 15, 1993.

Approved by the Governor January 27, 1993.

Filed in Office of Secretary of State January 27, 1993.

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**CHAPTER 4**

[Senate Bill 5166]

**DEPARTMENT OF TRANSPORTATION REFUNDING REVENUE BONDS**

**ISSUANCE AUTHORITY**

**Effective Date:** 3/12/93

AN ACT Relating to refunding revenue bonds for the department of transportation; amending RCW 43.84.092; adding new sections to chapter 47.56 RCW; creating a new section; making an appropriation; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** It is declared that it is in the best interest of the state to modify the debt service and reserve requirements, sources of payment, covenants, and other terms of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds.

**NEW SECTION. Sec. 2.** The state finance committee is authorized to issue refunding bonds and use other available money to refund, defease, and redeem all of those toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds under sections 3 through 6 of this act.

**NEW SECTION. Sec. 3.** (1) The refunding bonds authorized under section 2 of this act shall be general obligation bonds of the state of Washington and shall be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued shall be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds shall be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds shall not be later than January 1, 2002.

(2) The refunding bonds shall be signed by the governor and the state treasurer under the seal of the state, which signatures shall be made manually or in printed facsimile. The bonds shall be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state, and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds shall be fully negotiable instruments.

(3) The principal and interest on the refunding bonds shall be first payable in the manner provided in this section from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW.

(4) The principal of and interest on the refunding bonds shall be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36, 82.37, and 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional money as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and

special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds.

**NEW SECTION. Sec. 4.** Upon the issuance of refunding bonds as authorized by section 2 of this act, the department of transportation may liquidate the existing bond fund and other funds and accounts established in the proceedings which authorized the issuance of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds and apply the money contained in those funds and accounts to the defeasance and redemption of outstanding toll bridge authority, ferry, and Hood Canal refunding revenue bonds, except that prior to such bond redemption, money sufficient to pay the first interest installment on the refunding bonds shall be deposited in the ferry bond retirement fund. Money remaining in such funds not used for such bond defeasance and redemption or first interest installment on the refunding bonds shall be transferred to and deposited in the marine operating fund under section 7 of this act.

**NEW SECTION. Sec. 5.** Any money appropriated from the Puget Sound capital construction account under section 10, chapter . . ., Laws of 1993 (this act) and expended to pay expenses of issuing the refunding bonds authorized by section 2 of this act, and any money in the Puget Sound capital construction account subsequently used to pay principal and interest on the refunding bonds authorized by section 2 of this act shall be repaid to the Puget Sound capital construction account for use by the department of transportation.

**NEW SECTION. Sec. 6.** Except as otherwise provided by statute, the refunding bonds issued under authority of section 2 of this act, the bonds authorized by RCW 47.60.560 through 47.60.640, the bonds authorized by RCW 47.26.420 through 47.26.427, and any general obligation bonds of the state of Washington which have been or may be authorized by the legislature after the enactment of those sections and which pledge motor vehicle and special fuel excise taxes for the payment of principal thereof and interest thereon shall be an equal charge and lien against the revenues from such motor vehicle and special fuel excise taxes.

**NEW SECTION.** Sec. 7. The marine operating fund, temporarily created by section 39(1), chapter 15, Laws of 1991 sp. sess., is created in the state treasury.

**NEW SECTION.** Sec. 8. Sections 2 through 7 of this act are each added to chapter 47.56 RCW.

Sec. 9. RCW 43.84.092 and 1992 c 235 s 4 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the Eastern Washington University capital projects account, the federal forest revolving account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local sales and use tax account, the medical aid account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan I account, the public employees' retirement system plan II account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan I account, the teachers' retirement system plan II account, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' relief and pension principal account, the volunteer fire fighters' relief and pension administrative account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan I retirement account, the Washington law enforcement officers' and fire fighters' system plan II retirement account, the Washington

state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (2)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway construction stabilization account, the highway safety account, the marine operating fund, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the special category C account, the state patrol highway account, the transfer relief account, the transportation capital facilities account, the transportation equipment fund, the transportation fund, the transportation improvement account, and the urban arterial trust account.

(3) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**NEW SECTION. Sec. 10.** There is hereby appropriated from the Puget Sound capital construction account to the department of transportation for the biennium ending June 30, 1995, the sum of one hundred thousand dollars, or as much thereof as may be necessary, to pay expenses of issuing the refunding bonds authorized by section 2 of this act.

**NEW SECTION. Sec. 11.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 2, 1993.

Passed the House March 8, 1993.

Approved by the Governor March 12, 1993.

Filed in Office of Secretary of State March 12, 1993.

## CHAPTER 5

[Senate Bill 5956]

COMMISSION ON ETHICS IN GOVERNMENT AND  
CAMPAIGN PRACTICES ESTABLISHED

Effective Date: 3/12/93

AN ACT Relating to establishing a commission on ethics in government and campaign practices; creating a new section; making an appropriation; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** (1) A commission on ethics in government and campaign practices is hereby established. The commission shall study, hold public meetings, take public testimony, and make recommendations on the need and appropriate scope of legislation necessary to: (a) Promote public trust and confidence in government; (b) promote fair campaign practices; and (c) ensure the effective administration of public disclosure, conflict of interest, and ethics laws.

The commission's review shall include, but not be limited to, the mission, role, and funding of the public disclosure commission and the administration and enforcement of disclosure, ethics, and conflict of interest statutes, codes, and rules.

(2) The commission shall include ten citizen members from all areas of the state appointed by the governor. In addition, the commission shall include the governor or his or her designee; the attorney general or his or her designee; two members of the house of representatives from different political parties appointed by the speaker of the house of representatives; two members of the senate from different political parties appointed by the president of the senate; and the chief justice of the supreme court or his or her designee. The members of the commission shall be appointed within thirty days after the effective date of this act.

The governor and the attorney general shall within sixty days after the effective date of this act convene the commission and appoint a chair or chairs from among the citizen members.

(3) The commission is authorized to retain the services of experts, consultants, and support staff as necessary to carry out its duties. The governor, attorney general, and the legislature shall make available to the commission personnel, facilities, and other administrative assistance.

(4) The commission shall provide a report to the governor, the attorney general, the chief justice of the supreme court, the house of representatives, and the senate no later than December 1, 1993.

(5) Nonlegislative members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members of the commission shall be reimbursed for travel expenses as provided in RCW 44.04.120.

(6) The commission shall expire on March 31, 1994.

NEW SECTION. **Sec. 2.** The sum of one hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1993, from the general fund to the office of financial management for the commission on ethics in government and campaign practices for the purposes of this act. Any funds from this appropriation remaining unexpended on June 30, 1993, are hereby reappropriated for the biennium ending June 30, 1995, to the office of financial management for the commission on ethics in government and campaign practices for the purposes stated in this section.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 5, 1993.  
Passed the House March 5, 1993.  
Approved by the Governor March 12, 1993.  
Filed in Office of Secretary of State March 12, 1993.

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**CHAPTER 6**

[Engrossed House Bill 1303]

STATE HIGHWAY BONDS

Effective Date: 3/16/93

AN ACT Relating to state highway bonds; adding new sections to chapter 47.10 RCW; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** In order to provide funds necessary for the location, design, right of way, and construction of state highway improvements that are identified as interstate improvements, there shall be issued and sold upon the request of the Washington state transportation commission a total of two hundred million dollars of general obligation bonds of the state of Washington. These funds shall be used to temporarily pay the regular federal share of construction of federal-aid interstate highway improvements to complete state routes 5, 82, 90, 182, 405, and 705 in advance of federal-aid apportionments under the provisions of 23 U.S.C. Sec. 115 or 122: PROVIDED, That if by December 31, 1996, none of these bonds have been sold this section and sections 2 through 6 of this act are null and void.

NEW SECTION. **Sec. 2.** Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by sections 1 through 6 of this act in accordance with chapter 39.42 RCW. Bonds authorized by sections 1 through 6 of this act shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No



such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued.

**NEW SECTION. Sec. 3.** The proceeds from the sale of bonds authorized by sections 1 through 6 of this act shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in section 1 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

**NEW SECTION. Sec. 4.** Bonds issued under the authority of sections 1 through 6 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in sections 1 through 6 of this act from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of sections 1 through 6 of this act, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of sections 1 through 6 of this act.

**NEW SECTION. Sec. 5.** Both principal and interest on the bonds issued for the purposes of sections 1 through 6 of this act shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by sections 1 through 6 of this act shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from

excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds.

NEW SECTION. Sec. 6. Bonds issued under the authority of sections 1 through 5 of this act and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act are each added to chapter 47.10 RCW.

NEW SECTION. Sec. 8. 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. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 19, 1993.  
Passed the Senate March 4, 1993.  
Approved by the Governor March 16, 1993.  
Filed in Office of Secretary of State March 16, 1993.

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**CHAPTER 7**

[House Bill 1036]

**FUNDING BONDS—CORRECTION OF DOUBLE AMENDMENT**

**Effective Date:** 7/25/93

AN ACT Relating to correcting a double amendment relating to funding bonds; and repealing RCW 85.07.080.

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

NEW SECTION. Sec. 1. RCW 85.07.080 and 1983 c 167 s 191 & 1935 c 103 s 3 are each repealed.

Passed the House February 8, 1993.  
Passed the Senate March 27, 1993.  
Approved by the Governor April 9, 1993.  
Filed in Office of Secretary of State April 9, 1993.

**CHAPTER 8**

[House Bill 1037]

**AUCTION SALES OF COUNTY PROPERTY—CORRECTION OF DOUBLE AMENDMENT**

**Effective Date:** 7/25/93

AN ACT Relating to correcting a double amendment relating to auction sales of county property; and reenacting and amending RCW 36.34.080.

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

**Sec. 1.** RCW 36.34.080 and 1991 c 363 s 68 and 1991 c 245 s 10 are each reenacted and amended to read as follows:

All sales of county property ordered after a public hearing upon the proposal to dispose thereof must be supervised by the county treasurer and may be sold at a county or other government agency’s public auction, at a privately operated consignment auction that is open to the public, or by sealed bid to the highest and best bidder ~~((over))~~ meeting or exceeding the minimum sale price as directed by the county legislative authority.

- Passed the House February 8, 1993.
- Passed the Senate March 27, 1993.
- Approved by the Governor April 9, 1993.
- Filed in Office of Secretary of State April 9, 1993.

**CHAPTER 9**

[House Bill 1790]

**PUBLIC WORKS BOARD—APPROPRIATIONS FOR RECOMMENDED PROJECTS**

**Effective Date:** 4/9/93

AN ACT Relating to appropriations for projects recommended by the public works board; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** Pursuant to chapter 43.155 RCW, the following project loans recommended by the public works board are authorized to be made with funds previously appropriated from the public works assistance account:

- (1) Alderwood Water District—sanitary sewer project—design and construct Phase IB and Phase II of a major trunk sewer in the Swamp Creek drainage basin . . . . . \$3,500,000
- (2) City of Anacortes—road project—reconstruct Anaco Beach Road from Sunset Avenue on the north to the south approximately 5,700 feet towards the southern corporate limits of Anacortes . . . . . \$351,225
- (3) City of Arlington—domestic water project—construction of a 2.0 million gallon steel reservoir, a new municipal well, a pumping reduction valve station, approximately 7,000 lineal foot of 12-inch diameter and 3,500 lineal foot of 16-inch diameter mains, and booster pump station modifications . . . . \$940,000

- (4) City of Battle Ground—Capital Facilities Plan—develop a capital facilities plan that covers water, sanitary sewer, storm drain, and streets . . . . \$30,000
- (5) Beacon Hill Sewer District—sanitary sewer project—upgrade pumps, controls, and piping at Nevada Drive pump station. A 16-inch ductile iron pressure main will be installed to parallel existing 12-inch asbestos concrete pressure main . . . . . \$361,225
- (6) City of Bellevue Storm and Surface Water Utility—storm sewer project—construct a regional sedimentation basin on Coal Creek . . . . . \$434,480
- (7) Bryn Mawr-Lakeridge Water and Sewer District—domestic water project—replacement of aged and leaking water mains . . . . . \$220,860
- (8) City of Centralia—sanitary sewer project—replace distribution and collection lines at Trailer Village location . . . . . \$364,118
- (9) City of Centralia Waste Water Utility—sanitary sewer project—replace 8,230-feet of 8-inch diameter sewer lines in Basin 6 West collection system . . . . . \$692,660
- (10) City of Centralia Water Utility—domestic water project—replace North Tower, K Street, and Washington Street ground water wells . . . . . \$507,600
- (11) City of Chelan—domestic water project—construction of water treatment facilities to comply with the Surface Water Treatment Rule and provide a safe water supply to the City of Chelan . . . . . \$2,405,000
- (12) City of Cheney—domestic water project—find additional well source and transmit the additional water to its reservoir and distribution system . . . . . \$1,289,880
- (13) Clark County Department of Public Services—sanitary sewer project—design and construct the effluent pump station and emergency generators at the treatment plant—delayed part of the plant’s Phase 1B/2A expansion . . . . . \$1,079,500
- (14) Clear Lake Water District—Capital Facilities Plan—develop a capital facilities plan for the Clear Lake Water District . . . . . \$30,000
- (15) City of Colfax—sanitary sewer project—replace area 12 sewer lines . . . . . \$108,000
- (16) City of Colville—Capital Facilities Plan—develop a capital facilities plan for the City of Colville . . . . . \$30,000
- (17) Town of Coupeville—domestic water project—construct new 500,000-gallon reservoir—raise elevation of Sunset Terrace reservoir and replace 10,000 feet of transmission line . . . . . \$743,400
- (18) Cowlitz County PUD Number 1—domestic water project—pump station improvement, water line replacement, and electronic controls . . . . . \$225,960

- (19) Consolidated Diking Improvement District Number 3 of Cowlitz County—storm sewer project—replace existing storm water pump station with a new, higher-capacity pump station . . . . . \$787,710
- (20) Cross Valley Water District—domestic water project—upgrade Swan’s Trail Water District’s system to state and county standards . . . . . \$409,500
- (21) City of Davenport—sanitary sewer project—purchase land for an additional permanent spray irrigation site, build an additional lagoon cell, and upgrade the forcemain to accommodate additional waste . . . . . \$486,698
- (22) City of Eatonville—sanitary sewer project—replace existing lines, add manholes, and construct a new pump station . . . . . \$99,000
- (23) City of Everett Public Works—domestic water project—replace approximately 200 lineal feet each of three transmission line river crossings, 500 lineal feet each of two transmission line steep slope crossings, and 2,800 lineal feet replacement of a single transmission line . . . . . \$3,500,000
- (24) Town of Friday Harbor—Capital Facilities Plan—develop a combined capital facilities plan for growth . . . . . \$30,000
- (25) Grays Harbor County—Capital Facilities Plan—develop a utilities comprehensive plan Phase II . . . . . \$30,000
- (26) Highline Water District (formerly known as Water District #75)—domestic water project—add manganese filtration to the Des Moines well, increase height of North Hill Reservoir, and associated pipeline improvements . . \$1,200,000
- (27) City of Kennewick—road project—West 19th Avenue street reconstruction/rehabilitation, from Washington Street to Vancouver Street—South Vancouver Street widening from West 19th Avenue to West 16th Avenue . . \$1,293,486
- (28) King County Water District Number 107—domestic water project—replace electronic system controls . . . . . \$321,650
- (29) City of Kirkland—sanitary sewer project—replace Lake Street sewer trunk line . . . . . \$823,368
- (30) Liberty Lake Sewer District—Capital Facilities Plan—comprehensive wastewater facilities plan and capital facilities plan . . . . . \$30,000
- (31) Manchester Water District—domestic water project—replace deteriorated water mains in Manchester area . . . . . \$581,975
- (32) City of Milton—domestic water project—construct a new 4 million gallon standpipe and connect to existing distribution system . . . . . \$1,570,000
- (33) City of Napavine—domestic water project—the project will add a new well, reservoir and transmission mains—replace and upgrade existing mains . . . . . \$368,000
- (34) City of Nooksack—domestic water project—replace the water transmission line from the city reservoir to the town . . . . . \$337,700

- (35) City of North Bend—domestic water project—replace water line, storm sewer, curb and gutter, signalization, channelization, and pavement of street . . . . . \$125,240
- (36) Okanogan County Department of Public Works—road project—reconstruction of B & O Road North, Road #9206 . . . . . \$658,676
- (37) City of Olympia—storm sewer project—construct a new storm water detention and treatment facility that will route flows from an existing 35-acre subdivision to an undeveloped glacial depression for infiltration . . . \$188,600
- (38) City of Olympia—storm sewer project—construct a 35-acre storm water management facility for the treatment and retention of flows from west Olympia . . . . . \$1,658,700
- (39) Olympic View Water and Sewer District—domestic water project—replace 5,725 lineal feet of 8-inch steel water main . . . . . \$266,560
- (40) City of Omak—domestic water project—install water meters city-wide and replace the Ridge Drive water main . . . . . \$810,000
- (41) City of Orting—domestic water project—replace South Street Sewer Lines. This project will provide for the installation of water meters for all City of Orting water users and the installation of a 12-inch water main on Kansas Avenue . . . . . \$652,959
- (42) City of Pateros—domestic water project—replace deteriorated and undersized water lines . . . . . \$337,008
- (43) City of Pomeroy—road project—replace retaining wall and sewer line adjacent to Pataha Street and repair street surface . . . . . \$75,937
- (44) City of Port Angeles—storm sewer project—reconstruct a neighborhood facility to reduce local flooding . . . . . \$760,000
- (45) City of Redmond—road project—reconstruct roadway and provide drainage improvements on 148th Avenue Northeast . . . . . \$2,700,000
- (46) City of Renton—sanitary sewer project—replace sewer lines in the North Renton neighborhood (Central Renton sub-basin) . . . . . \$643,622
- (47) City of Renton—sanitary sewer project—replace existing sewer lines with interceptor to correct insufficient capacity problems and for protection of sole source aquifer . . . . . \$2,542,704
- (48) Saratoga Water District—domestic water project—the project consists of replacing approximately 4,500 feet of 50-year-old 2-inch steel main with new 8-inch ductile main . . . . . \$244,260
- (49) City of Seattle—road project—upgrade traffic signals, improve traffic flow, and upgrade street lighting . . . . . \$1,280,000

- (50) City of Seattle Water Department—domestic water project—cover and rehabilitate the 5.5 million gallon Magnolia Manor reservoir to resolve current water quality and corrosion problems . . . . . \$2,220,000
- (51) Shoreline Water District—domestic water project—construct two new intertie pressure-reducing stations with the City of Mountlake Terrace—replace undersized water mains in critical locations throughout the district . \$615,600
- (52) Skyway Water and Sewer District—domestic water—prepare design report and design/construction documents for 4,000,000-gallon joint Skyway-Seattle water reservoir, pump station, and transmission mains . . . . . \$211,500
- (53) Southwest Suburban Sewer District—sanitary sewer project. This project includes repairing nine sewer mains. The lines will be repaired due to scouring, corrosion, cracks, slipped joints, infiltration, roots, and sags. Additional rehabilitation will be done at Pump Station #8 to replace the pumps, install new motor controls, and replace the A.C. force main of approximately 2,000 feet . . . . . \$1,211,000
- (54) City of Spokane—bridge project—replace existing Post Street Bridge with a new Lincoln Street Bridge and completely remove the existing Post Street structure . . . . . \$1,600,000
- (55) City of Spokane—domestic water project—construct a permanent cover over the 24 million gallon Lincoln Heights reservoir basin . . . . . \$1,900,000
- (56) Public Utility District Number 1 of Stevens County—domestic water project—install water pipelines, service connections, water meters, fire hydrants, and build one 100,000-gallon gravity storage tank . . . . . \$850,400
- (57) Public Utility District Number 1 of Stevens County—domestic water project—provide for pump, pipeline, and system control improvement . . . . . \$233,100
- (58) City of Tumwater—domestic water project—abandon and replace existing city wells number 2 and number 10 with new wells, including pump, controls, piping, telemetry, and well house . . . . . \$234,388
- (59) Wahkiakum County PUD Number 1—Capital Facilities Plan—Western Wahkiakum water system reliability improvement study . . . . . \$30,000
- (60) Whitworth Water District Number 2—domestic water project—½ million gallon reservoir and 14-inch transmission main north of Midway Road . . . . . \$604,800
- (61) City of Yakima—sanitary sewer project—replace, rehabilitate, or improve several existing wastewater treatment facility components . . . . . \$3,221,708
- (62) Emergency Public Works Loans—as authorized by RCW 43.155.065 . . . . . \$1,000,000
- (63) Capital Facilities Plan loans . . . . . \$300,000

Total approved list . . . . . \$52,359,758

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 13, 1993.  
Passed the Senate March 27, 1993.  
Approved by the Governor April 9, 1993.  
Filed in Office of Secretary of State April 9, 1993.

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**CHAPTER 10**

[House Bill 1956]

**COMPUTERIZED MEDICAL INSURANCE INFORMATION SHARING**

**Effective Date: 7/25/93**

AN ACT Relating to computerized medical insurance eligibility and beneficiary coverage information available to the department of social and health services from medical insurance payers; and adding a new chapter to Title 74 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that:

- (1) Simplification in the administration of payment of health benefits is important for the state, providers, and private insurers;
- (2) The state, providers, and private insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards; and
- (3) It is in the best interests of the state, providers, and private insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries.

Therefore, the legislature declares that to improve the coordination of benefits between the department of social and health services and private insurers to ensure that medical insurance benefits are properly utilized, a transfer of uniform information from the department of social and health services to Washington state private insurers should be instituted.

NEW SECTION. Sec. 2. For the purposes of this chapter:

- (1) "Health insurance coverage" includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and medical assistance under chapter 74.09 RCW, and the state through this chapter.
- (2) "Insurer" means a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor



providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, and shall also include any employer or union that is providing health insurance coverage on a self-insured basis.

(3) "Medical assistance administration" means the division within the department of social and health services authorized under chapter 74.09 RCW.

(4) "Computerized" means on-line or batch processing with standardized format via magnetic tape output.

(5) "Insurance coverage" means subscriber and beneficiary eligibility and benefit coverage data.

(6) "Joint beneficiary" is a resident of Washington state who has private insurance coverage and is a recipient of public assistance benefits under chapter 74.09 RCW.

NEW SECTION. Sec. 3. (1) The medical assistance administration shall provide routine and periodic computerized information to private insurers regarding client eligibility and coverage information. Private insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the medical assistance administration. The medical assistance administration shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible data base shall be developed by affected health insurers and the medical assistance administration. The medical assistance administration shall establish a representative group of insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized data base. The data base shall include elements essential to the medical assistance administration and its population's insurance coverage information.

(3) If the state and private insurers enter into other agreements regarding the use of common computer standards, the data base identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for medical assistance administration programs.

(5) The frequency of updates will be mutually agreed to by each insurer and the medical assistance administration based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The insurers and the medical assistance administration shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, and 70.02 RCW, RCW 42.17.310, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The medical assistance administration shall target implementation of this chapter to those private insurers with the highest probability of joint beneficiaries.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act shall constitute a new chapter in Title 74 RCW.

Passed the House March 11, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 9, 1993.

Filed in Office of Secretary of State April 9, 1993.

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## CHAPTER 11

[Engrossed House Bill 1022]

### SENTENCING GUIDELINES COMMISSION MEMBERSHIP REVISED

Effective Date: 4/12/93

AN ACT Relating to sentencing guidelines commission membership; amending RCW 9.94A.060; and declaring an emergency.

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

**Sec. 1.** RCW 9.94A.060 and 1988 c 157 s 2 are each amended to read as follows:

(1) The commission consists of ~~((fifteen))~~ sixteen voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management or designee, as an ex officio member;

(c) Until ~~((July 1, 1992))~~ June 30, 1998, the chair of the indeterminate ~~((sentencing))~~ sentence review board, as an ex officio member~~((, and thereafter))~~;

(d) The chair of the clemency and pardons board, as an ex officio member;

~~((d))~~ (e) Two prosecuting attorneys;

~~((e))~~ (f) Two attorneys with particular expertise in defense work;

~~((f))~~ (g) Four persons who are superior court judges;

~~((g))~~ (h) One person who is the chief law enforcement officer of a county or city;

~~((h))~~ (i) Three members of the public who are not and have never been prosecutors, attorneys, judges, or law enforcement officers.

In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the attorney members, of the

association of superior court judges in respect to the members who are judges, and of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer.

(3) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing four of the initial members for terms of one year, four for terms of two years, and four for terms of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120, as now existing or hereafter amended. Members shall be compensated in accordance with RCW 43.03.250.

**NEW SECTION.** Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 8, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 12, 1993.

Filed in Office of Secretary of State April 12, 1993.

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## CHAPTER 12

[House Bill 1035]

### SUPPORT OBLIGATIONS—CORRECTION OF DOUBLE AMENDMENT RELATING TO Effective Date: 7/25/93

AN ACT Relating to correction of double amendments relating to support obligations; and reenacting and amending RCW 26.23.110.

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

**Sec. 1.** RCW 26.23.110 and 1989 c 360 s 16 and 1989 c 175 s 77 are each reenacted and amended to read as follows:

(1) The department may serve a notice of support owed on a responsible parent when a support order:

(a) Does not state the current and future support obligation as a fixed dollar amount; or

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine

the fixed dollar amount of the ~~((accrued))~~ support debt ~~((and/))~~ or the fixed dollar amount of the current and future support obligation, or both.

(2) The notice of support owed shall facilitate enforcement of the support order and implement and effectuate the terms of the support order, rather than modify those terms. When the office of support enforcement issues a notice of support owed, the office shall inform the payee under the support order.

(3) The notice of support owed shall be served on a responsible parent by personal service or any form of mailing requiring a return receipt. The notice of support owed shall contain an initial finding of the fixed dollar amount of current and future support obligation that should be paid ~~((and/))~~ or the fixed dollar amount of the support debt owed under the support order, or both.

(4) A responsible parent who objects to the fixed dollar amounts stated in the notice of support owed has twenty days from the date of the service of the notice of support owed to file an application for an adjudicative proceeding or initiate an action in superior court.

(5) The notice of support owed shall state that the responsible parent may:

(a) File an application for an adjudicative proceeding governed by chapter 34.05 RCW, the administrative procedure act, in which the responsible parent will be required to appear and show cause why the fixed dollar amount of support debt or current and future support obligation, or both, stated in the notice ~~((for current and future support and/or the accrued support debt))~~ of support owed is incorrect and should not be ordered; or

(b) Initiate an action in superior court.

(6) If the responsible parent does not file an application for an adjudicative proceeding or initiate an action in superior court, the fixed dollar amount of current and future support ~~((and/))~~ obligation or ~~((the))~~ support debt, or both, stated in the notice of support owed shall become final and subject to collection action.

(7) If an adjudicative proceeding is requested, the department shall mail a copy of the notice of ~~((hearing))~~ adjudicative proceeding to the payee under the support order at the payee's last known address. A payee who appears for the ~~((hearing shall be allowed))~~ adjudicative proceeding is entitled to participate. Participation includes, but is not limited to, giving testimony, presenting evidence, being present for or listening to other testimony offered in the adjudicative proceeding, and offering rebuttal to other testimony. Nothing in this section shall preclude the administrative law judge from limiting participation to preserve the confidentiality of information protected by law.

(8) If the responsible parent does not initiate an action in superior court, and serve notice of the action on the department within the twenty-day period, the responsible parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in RCW 34.05.510 through 34.05.598.

(9) An adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the fixed dollar amounts established

in the adjudicative order were based. The fixed dollar amount of current and future support ~~((and/))~~ obligation or the amount of the support debt, or both, determined under this section shall be subject to collection under this chapter and other applicable state statutes.

(10) The department shall also provide for:

(a) An annual review of the support order if either the office of support enforcement or the responsible parent requests such a review; and

(b) A late ~~((hearing))~~ adjudicative proceeding if the responsible parent fails to file an application for an adjudicative proceeding in a timely manner under this section.

(11) If an annual review or late ~~((hearing))~~ adjudicative proceeding is requested under subsection (10) of this section, the department shall mail a copy of the notice of ~~((hearing))~~ adjudicative proceeding to the payee at the payee's last known address. A payee who appears for the adjudicative proceeding ~~((shall be allowed))~~ is entitled to participate. Participation includes, but is not limited to, giving testimony, presenting evidence, being present for or listening to other testimony offered in the adjudicative proceeding, and offering rebuttal to other testimony. ~~((Nothing in this section shall preclude))~~ The administrative law judge ~~((from limiting))~~ may limit participation to preserve the confidentiality of information protected by law.

Passed the House February 22, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 12, 1993.

Filed in Office of Secretary of State April 12, 1993.

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## CHAPTER 13

[House Bill 1038]

### HEALTH CARE ASSISTANTS—CORRECTION OF DOUBLE AMENDMENT RELATING TO

**Effective Date:** 7/25/93

AN ACT Relating to correcting a double amendment relating to authorized functions of health care assistants; and reenacting and amending RCW 18.135.060.

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

**Sec. 1.** RCW 18.135.060 and 1986 c 216 s 3 and 1986 c 115 s 1 are each reenacted and amended to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) Any health care assistant certified pursuant to this chapter shall perform the functions authorized in this chapter only by delegation of authority from the health care practitioner and under the supervision of a health care practitioner acting within the scope of his or her license. In the case of subcutaneous, intradermal and intramuscular and intravenous injections, a health care assistant may perform such functions only under the supervision of a health care

practitioner having authority, within the scope of his or her license, to order such procedures.

(b) The health care practitioner who ordered the procedure or a health care practitioner who could order the procedure under his or her license shall be physically present in the immediate area of a hospital or nursing home where the injection is administered. Sensitivity agents being administered intradermally or by the scratch method are excluded from this requirement.

~~((PROVIDED, That))~~ (2) A health care assistant trained by a federally approved end-stage renal disease facility may perform venipuncture for blood withdrawal, administration of oxygen as necessary by cannula or mask, venipuncture for placement of fistula needles, intravenous administration of heparin and sodium chloride solutions as an integral part of dialysis treatment, and intradermal, subcutaneous, or topical administration of local anesthetics in conjunction with placement of fistula needles, and intraperitoneal administration of sterile electrolyte solutions and heparin for peritoneal dialysis((,)); (a) In the center or health care facility ((or in the patient's home)) if a registered nurse licensed under chapter 18.88 RCW is physically present and immediately available in such center or health care facility ((for patients dialyzing in the health care facility or center or for patients dialyzing at)); or (b) in the patient's home if a physician and a registered nurse are available for consultation during the dialysis.

Passed the House March 8, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 12, 1993.

Filed in Office of Secretary of State April 12, 1993.

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## CHAPTER 14

[House Bill 1079]

### EMINENT DOMAIN JUDGMENTS—APPEAL NOT TO DELAY PROCEEDINGS

Effective Date: 4/12/93

AN ACT Relating to review of eminent domain judgments; amending RCW 8.12.200; and declaring an emergency.

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

**Sec. 1.** RCW 8.12.200 and 1988 c 202 s 10 are each amended to read as follows:

Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall

be final and conclusive as to the damages caused by such improvement unless appellate review is sought, and review of the same shall not delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties seeking review of said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of review by the supreme court or the court of appeals of the state by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively appellate review and final judgment may be rendered in the superior court as in other cases.

**NEW SECTION.** **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 22, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 12, 1993.

Filed in Office of Secretary of State April 12, 1993.

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## CHAPTER 15

[House Bill 2032]

### FAMILY COURT—AUTHORITY TO APPOINT FAMILY COURT AND MENTAL HEALTH COMMISSIONER EXTENDED TO ALL COUNTIES

**Effective Date:** 4/12/93

AN ACT Relating to court commissioners in counties with a population of one million or more; amending RCW 26.12.050 and 71.05.135; and declaring an emergency.

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

**Sec. 1.** RCW 26.12.050 and 1991 c 363 s 17 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in each county ~~((with a population of less than one million,))~~ the superior court may appoint the following persons to assist the family court in disposing of its business:

(a) One or more attorneys to act as family court commissioners, and

(b) Such investigators, stenographers and clerks as the court shall find necessary to carry on the work of the family court.

(2) The county legislative authority must approve the creation of family court commissioner positions.

(3) The appointments provided for in this section shall be made by majority vote of the judges of the superior court of the county and may be made in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Family court commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a family court commissioner may also be appointed to any other commissioner position authorized by law.

**Sec. 2.** RCW 71.05.135 and 1991 c 363 s 146 are each amended to read as follows:

In each county (~~with a population of less than one million~~;) the superior court may appoint the following persons to assist the superior court in disposing of its business: PROVIDED, That such positions may not be created without prior consent of the county legislative authority:

(1) One or more attorneys to act as mental health commissioners; and

(2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 13, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 12, 1993.

Filed in Office of Secretary of State April 12, 1993.

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## CHAPTER 16

[Engrossed Senate Bill 5351]

## TEACHERS—DISABILITY RETIREMENT—PAYMENT OF DEATH BENEFIT

Effective Date: 4/12/93

AN ACT Relating to teachers' retirement; amending RCW 41.32.520; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 41.32.520 and 1992 c 212 s 7 are each amended to read as follows:

(1) Except as specified in subsection (3) of this section, upon receipt of proper proofs of death of any member before retirement or before the first installment of his or her retirement allowance shall become due his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons as he or she shall have nominated by written designation duly executed and filed with the department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or reestablishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670:

(a) A widow or widower, without a child or children under eighteen years of age, may elect a monthly payment of fifty dollars to become effective at age fifty, provided the member had fifteen or more years of Washington membership service credit. A benefit paid under this subsection (1)(a) shall terminate at the marriage of the beneficiary.

(b) The beneficiary, if a surviving spouse or a dependent (as that term is used in computing the dependent exemption for federal internal revenue purposes) may elect to receive a joint and one hundred percent retirement allowance under RCW 41.32.530.

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated

contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(2) If no qualified beneficiary survives a member, at his or her death his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to his or her estate, or his or her dependents may qualify for survivor benefits under benefit plan (1)(b) in lieu of a cash refund of the members accumulated contributions in the following order: Widow or widower, guardian of a dependent child or children under age eighteen, or dependent parent or parents.

(3) If a member who has received a determination of disability as specified in RCW 41.32.550 and selected a retirement option under RCW 41.32.530(1)(b) dies before the first retirement allowance installment becomes due, he or she shall receive the benefit provided under the selected retirement option.

NEW SECTION. Sec. 2. The provisions of section 1(3) of this act shall apply to all determinations of disability made after June 30, 1992.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 11, 1993.

Passed the House March 29, 1993.

Approved by the Governor April 12, 1993.

Filed in Office of Secretary of State April 12, 1993.

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## CHAPTER 17

[Engrossed Senate Bill 5362]

### PUBLIC HAZARDS—FULL DISCLOSURE OF CIVIL COURT PROCEEDINGS RELATING TO

Effective Date: 7/25/93

AN ACT Relating to full disclosure of civil court proceedings relating to public hazards; adding new sections to chapter 4.24 RCW; adding a new section to chapter 4.16 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW to read as follows:

(1) As used in this section, "public hazard" means an instrumentality, including but not limited to any device, instrument, procedure, product, or a condition of a device, instrument, procedure, or product, that:

(a) Presents a real and substantial potential for repetition of the harm inflicted; or

(b) Involves a single incident which affected or was likely to affect many people.

As used in this section, the term "procedure" does not include acts or procedures by licensed professionals acting within the scope of their licenses.

(2) Except as provided in this section, no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or any relevant information or material concerning a public hazard, nor shall the court enter an order or judgment that has the purpose or effect of concealing any information or material that is relevant to the public's knowledge or understanding of a public hazard.

(3) Any portion of an agreement or contract that has the purpose or effect of concealing a public hazard, relevant information or material concerning a public hazard, or information or material that is relevant to the public's knowledge or understanding of a public hazard, is void, contrary to public policy, and may not be enforced. A party to the agreement or contract may bring a declaratory action pursuant to this section to determine whether an agreement or contract conceals a public hazard and is void.

(4)(a) In any declaratory or other civil action, a party may bring a motion for a temporary order restraining disclosure to the public or to third parties information or material about the party making the motion which is known to another party or which is sought from the party making the motion by another party. Upon good cause shown the court shall examine in camera the information or material sought to be protected. The court may in the court's discretion issue a temporary order restraining a party or parties from disseminating the protected information or material to the public or third parties. The temporary order shall terminate upon the entry of a final order or judgment or a dismissal of the action.

(b) In any final order or judgment entered in any declaratory or other civil action, if the court finds that all or portions of the information or material sought to be protected is relevant to the public's knowledge or understanding of a public hazard, the court shall provide for disclosure of the information or material. If the court finds that all or a portion of the information or material sought to be protected is not relevant to the public's knowledge or understanding of the public hazard, the court shall require the information to be sealed and may include in the final order or judgment provisions restraining any or all parties from disclosing the information which is protected.

(5)(a) Any third party, including but not limited to representatives of news media, has standing to contest a motion, order, judgment, agreement, or contract that allegedly conceals a public hazard. The third party may challenge the

motion by intervention during the court action or the third party may bring a declaratory action pursuant to this section to determine whether the agreement, contract, order, or judgment conceals a public hazard.

(b) The third party must (i) establish the existence of a public hazard; (ii) establish that the public hazard was a subject within the agreement, contract, order, or judgment; and (iii) establish a basis for a reasonable belief by the third party that the agreement, contract, order, or judgment concealed the public hazard in violation of sections 1 through 3 of this act.

(c) If the court finds that the third party has met the requirements of (b) of this subsection, the court shall order the defendant to produce the information or material for an in camera review by the court. The court shall determine whether the information or material protected under the agreement, contract, order, or judgment conceals a public hazard in violation of sections 1 through 3 of this act. Upon review, the court shall issue an order regarding dissemination of the information or material in accordance with subsection (4)(b) of this section.

(d) The court may award reasonable attorneys' fees and actual costs to the prevailing party in an action under this subsection (5).

NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW to read as follows:

Any person who violates an order either publishing or sealing information or material issued under sections 1 through 3 of this act, shall be in contempt of court. The court shall award attorneys' fees and costs incurred in enforcing the order plus actual damages against the party who violated the order.

NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW to read as follows:

Any party who attempts to condition an agreement or contract upon another party's agreement to conceal an instrumentality that the party knows or reasonably should have known is a public hazard or any party who enters into an agreement or contract that conceals an instrumentality that the party knows or reasonably should have known is a public hazard shall be in violation of the consumer protection act, chapter 19.86 RCW. If the party is engaged in the business of insurance then the party shall also be in violation of RCW 48.30.010.

NEW SECTION. **Sec. 4.** This act shall apply to all agreements, contracts, orders, and judgments entered on or after the effective date of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 4.16 RCW to read as follows:

An action for declaratory relief or other civil action brought pursuant to sections 1 through 3 of this act to determine whether an agreement, contract, order, or judgment conceals a public hazard in violation of sections 1 through 3 of this act must be brought within three years of entry of the order or judgment or three years from the date the parties entered into the agreement or contract.

**\*NEW SECTION.** Sec. 6. *This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.*

\*Sec. 6 was vetoed, see message at end of chapter.

Passed the Senate March 10, 1993.

Passed the House March 29, 1993.

Approved by the Governor April 12, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 12, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Engrossed Senate Bill No. 5362 entitled:

"AN ACT Relating to full disclosure of civil court proceedings relating to public hazards."

Section 6 of Engrossed Senate No. 5362 is an emergency clause which implements this bill on July 1, 1993. I do not believe that the early effective date is appropriate in this case. The purpose of ESB 5362 is to inform the public of the existence of public hazards, such as products or instrumentalities which pose a danger of damage or injury to the public, by establishing as the public policy of this state that information regarding the existence of such hazards not be sealed by court order nor concealed by private contract or agreement. It is not the intent of this bill to disclose trade secrets or other proprietary information protected under existing statutes, case law and court rules. The existence of a public hazard will be determined by the courts and only such information as the court determines to be necessary to inform the public of the existence and nature of the hazard will be subject to the disclosure requirements of the bill.

With the exception of section 6, Engrossed Senate Bill No. 5362 is approved."

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## CHAPTER 18

[Senate Bill 5070]

### LABOR RELATIONS CONSULTANTS—REPORTING REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to labor relations consultants; amending RCW 43.09.230; and creating a new section.

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

**NEW SECTION.** Sec. 1. The legislature finds and declares that the use of outside consultants is an increasing element in public sector labor relations. The public has a right to be kept informed about the role of outside consultants in public sector labor relations. The purpose of this act is to help ensure that public information is available.

Sec. 2. RCW 43.09.230 and 1989 c 168 s 1 are each amended to read as follows:

The state auditor shall require from every taxing district and other political subdivisions financial reports covering the full period of each fiscal year, in accordance with the forms and methods prescribed by the state auditor, which shall be uniform for all accounts of the same class.

Such reports shall be prepared, certified, and filed with the division within one hundred fifty days after the close of each fiscal year.

The reports shall contain accurate statements, in summarized form, of all collections made, or receipts received, by the officers from all sources; all accounts due the public treasury, but not collected; and all expenditures for every purpose, and by what authority authorized; and also: (1) A statement of all costs of ownership and operation, and of all income, of each and every public service industry owned and operated by a municipality; (2) a statement of the entire public debt of every taxing district, to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, and the provisions made for the payment thereof; (3) a classified statement of all receipts and expenditures by any public institution; and (4) a statement of all expenditures for labor relations consultants, with the identification of each consultant, compensation, and the terms and conditions of each agreement or arrangement; together with such other information as may be required by the state auditor.

The reports shall be certified as to their correctness by the state auditor, the state auditor's deputies, or other person legally authorized to make such certificate.

Their substance shall be published in an annual volume of comparative statistics at the expense of the state as a public document.

Passed the Senate February 18, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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**CHAPTER 19**

[Senate Bill 5067]

**JOINT TENANCY—SEVERANCE OF**

**Effective Date: 7/25/93**

AN ACT Relating to joint tenancy; and amending RCW 64.28.010 and 64.28.040.

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

**Sec. 1.** RCW 64.28.010 and 1963 ex.s. c 16 s 1 are each amended to read as follows:

Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a

form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from husband and wife, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors.

Sec. 2. RCW 64.28.040 and 1985 c 10 s 2 are each amended to read as follows:

(1) Joint tenancy interests held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both husband and wife. Any such interest passes to the survivor of the husband and wife as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either husband or wife, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of the husband or wife, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies.

Passed the Senate February 17, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 20

[Senate Bill 5126]

### CAPE SHOALWATER LANDMARK REPLACEMENT

Effective Date: 7/25/93

AN ACT Relating to the geographical landmark at Cape Shoalwater; amending RCW 75.12.210 and 75.28.012; and creating a new section.

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

NEW SECTION. Sec. 1. The purpose of this act is to correct references to a geographical landmark on Cape Shoalwater that no longer exists. Cape

Shoalwater Light has been removed and a new tower has been constructed four hundred yards to the west. It is not intended that this act make any substantive change in the boundaries of the areas described in RCW 75.12.210 and 75.28.012 beyond the minor adjustment necessitated by the replacement of the landmark.

**Sec. 2.** RCW 75.12.210 and 1983 1st ex.s. c 46 s 60 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful to fish for or take salmon with gear other than troll gear or angling gear within the offshore waters or the waters of the Pacific Ocean over which the state has jurisdiction lying west of the following line: Commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between the lighthouse on Tatoosh Island in Clallam County and Bonilla Point on Vancouver Island; thence southerly to the lighthouse on Tatoosh Island; thence southerly to the most westerly point of Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean, crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbor; thence southerly to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to the Cape Shoalwater ((Light)) tower at the entrance to Willapa Bay; thence southerly to Leadbetter Point; thence southerly along the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly to the knuckle of the South jetty at the entrance to said river.

(2) The director may authorize the use of nets for taking salmon in the waters described in subsection (1) of this section for scientific investigations.

**Sec. 3.** RCW 75.28.012 and 1983 1st ex.s. c 46 s 102 are each amended to read as follows:

The following licensing districts are created:

(1) The Puget Sound licensing district includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(2) The Grays Harbor-Columbia river licensing district includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(3) The Willapa Bay-Columbia river licensing district includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater ((Light)) tower and those waters



of the Columbia river and tributary sloughs described in subsection (2) of this section.

Passed the Senate February 9, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 21

[Senate Bill 5128]

### KEG REGISTRATION—REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to registration for kegs or other similar containers for malt liquor; and amending RCW 66.24.360, 66.28.200, and 66.28.220.

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

**Sec. 1.** RCW 66.24.360 and 1991 c 42 s 4 are each amended to read as follows:

There shall be a beer retailer's license to be designated as ~~((a))~~ a class E license to sell beer at retail in bottles and original packages, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees holding only an E license may ~~((not))~~ also sell malt liquor in kegs or other containers capable of holding ~~((four))~~ less than five and one-half gallons ~~((or more))~~ of liquid. The annual fee for the license is seventy-five dollars for each store: PROVIDED, That a holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twenty-five dollars for each store. Licensees under this section whose business is primarily the sale of beer and/or wine at retail may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section shall be subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or wholesaler of liquor.

For the purpose of this section, "beer" includes, in addition to the usual and customary meaning, bottle conditioned beer which has been fermented partially or completely in the container in which it is sold to the retail customer and which may contain residual active yeast. The bottles and original packages in which such bottle conditioned beer may be sold under this section shall not exceed one hundred seventy ounces in capacity.

**Sec. 2.** RCW 66.28.200 and 1989 c 271 s 229 are each amended to read as follows:

~~((Only))~~ Licensees holding a class A or B license in combination with a class E license may sell malt liquor in kegs or other containers capable of

holding four gallons or more of liquid. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(1) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(2) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(3) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(a) The purchaser is of legal age to purchase, possess, or use malt liquor;

(b) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(c) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(4) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

**Sec. 3.** RCW 66.28.220 and 1989 c 271 s 231 are each amended to read as follows:

The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a state-wide basis or on the basis of smaller geographical areas.

The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge class E licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

Passed the Senate February 16, 1993.  
 Passed the House April 6, 1993.  
 Approved by the Governor April 14, 1993.  
 Filed in Office of Secretary of State April 14, 1993.

## CHAPTER 22

[Senate Bill 5265]

### FUNERAL EXPENSES FOR DECEASED PUBLIC ASSISTANCE RECIPIENT—RESPONSIBILITY FOR Effective Date: 7/25/93

AN ACT Relating to funeral expenses of a deceased person; and amending RCW 74.08.125.  
 Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 74.08.125 and 1992 c 108 s 3 are each amended to read as follows:

If the deceased person is an adult and is survived by a parent or parents, or children, the department ((may)) shall take into consideration the assets of such parent, parents, or children in determining whether or not the department will assume responsibility for the funeral, transportation, or disposition costs.

Passed the Senate March 9, 1993.  
 Passed the House April 6, 1993.  
 Approved by the Governor April 14, 1993.  
 Filed in Office of Secretary of State April 14, 1993.

## CHAPTER 23

[Substitute Senate Bill 5802]

### ENVIRONMENTAL POLICY ACT—USE OF EXISTING DOCUMENTS Effective Date: 7/25/93

AN ACT Relating to state environmental policy act documents; and adding a new section to chapter 43.21C RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.21C RCW to read as follows:

Lead agencies are authorized to use in whole or in part existing environmental documents for new project or nonproject actions, if the documents adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography. The lead agency shall independently review the content of the existing documents and determine that the information and analysis to be used is relevant and adequate.

If necessary, the lead agency may require additional documentation to ensure that all environmental impacts have been adequately addressed.

NEW SECTION. **Sec. 2.** Section 1 of this act shall be codified as RCW 43.21C.034.

Passed the Senate March 11, 1993.  
Passed the House April 6, 1993.  
Approved by the Governor April 14, 1993.  
Filed in Office of Secretary of State April 14, 1993.

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**CHAPTER 24**

[House Bill 1130]

**PRISONERS—FURLOUGH, RELEASE, OR DISCHARGE  
OF—NOTICE REQUIREMENTS**

**Effective Date:** 7/25/93

AN ACT Relating to the release of background information by the state patrol; and amending RCW 43.43.745.

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

**Sec. 1.** RCW 43.43.745 and 1990 c 3 s 409 are each amended to read as follows:

(1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of corrections shall notify, forty-eight hours prior to the beginning of such furlough, the ~~((section))~~ sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest Washington state patrol district facility in the county wherein the furloughed prisoner is to be residing, and other similar criminal justice agencies that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. ~~((Upon receipt of furlough information pursuant to the provisions of this subsection the section shall notify the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest attachment of the Washington state patrol in the county wherein the furloughed~~

~~prisoner shall be residing and such other criminal justice agencies as the section may determine should be so notified.)~~

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: PROVIDED, That the chief shall promulgate rules pursuant to chapter 34.05 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state indeterminate sentence review board, or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the ~~((section))~~ sheriff or director of public safety, the nearest Washington state patrol district facility, and other similar criminal justice agencies that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his or her release or discharge~~((, and shall additionally notify the section of change in residence or conditions of release or discharge of persons on active parole supervision, and shall notify the section when persons are discharged from active parole supervision))~~.

Local law enforcement agencies may require persons convicted of sex offenses to register pursuant to RCW 9A.44.130. In addition, nothing in this section shall be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to RCW 9A.44.130 which source may include any officer or other agency or subdivision of the state.

Passed the House March 11, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 25

[House Bill 1216]

### ALCOHOL AWARENESS PROGRAM—LIQUOR CONTROL BOARD AUTHORIZED TO ACCEPT AND DISBURSE FUNDS FOR

Effective Date: 7/25/93

AN ACT Relating to the acceptance and disbursement of funds and grants by the liquor control board; and amending RCW 66.08.050.

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

**Sec. 1.** RCW 66.08.050 and 1986 c 214 s 2 are each amended to read as follows:

The board, subject to the provisions of this title and the regulations, shall

(1) determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) appoint in cities and towns and other communities, in which no state liquor store is located, liquor vendors. Such liquor vendors shall be agents of the board and be authorized to sell liquor to such persons, firms or corporations as provided for the sale of liquor from a state liquor store, and such vendors shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language.

Passed the House February 22, 1993.  
 Passed the Senate April 1, 1993.  
 Approved by the Governor April 14, 1993.  
 Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 26

[House Bill 1217]

### SEIZED LIQUOR—DISPOSAL AND USE OF—REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to providing seized liquor for training and investigations; amending RCW 66.32.040 and 66.32.090; and adding a new section to chapter 66.08 RCW.

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

**Sec. 1.** RCW 66.32.040 and 1955 c 39 s 6 are each amended to read as follows:

All liquor seized pursuant to the authority of ~~((the))~~ a search warrant or an arrest shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be ~~((delivered to the board))~~ disposed of by the agency seizing the liquor.

**Sec. 2.** RCW 66.32.090 and 1987 c 202 s 223 are each amended to read as follows:

In every case in which liquor is seized by a sheriff or deputy of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or deputy of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure ~~((, and to immediately deliver over such liquor to the board, or its duly authorized representative, at such place as may be designated by it)).~~

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 66.08 RCW to read as follows:

The liquor control board may provide liquor at no charge, including liquor forfeited under chapter 66.32 RCW, to recognized law enforcement agencies within the state when the law enforcement agency will be using the liquor for bona fide law enforcement training or investigation purposes.

Passed the House March 8, 1993.  
 Passed the Senate April 1, 1993.  
 Approved by the Governor April 14, 1993.  
 Filed in Office of Secretary of State April 14, 1993.

CHAPTER 27

[Engrossed House Bill 1238]

STALKING—JUVENILE OFFENDERS—RELEASE, LEAVE,  
OR ESCAPE OF—NOTICE REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to notification to victims, witnesses, and the community of a change in the confinement status of juvenile offenders; and amending RCW 13.40.215.

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

**Sec. 1.** RCW 13.40.215 and 1990 c 3 s 101 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ten days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense ((~~or~~))<sub>2</sub> a sex offense, or stalking, to the following:

(i) The chief of police of the city, if any, in which the juvenile will reside; and

(ii) The sheriff of the county in which the juvenile will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

(i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(2)(a) If a juvenile found to have committed a violent offense ((~~or~~))<sub>2</sub> a sex offense, or stalking escapes from a facility of the department, the secretary shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the juvenile resided immediately before the juvenile's arrest. If previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the juvenile is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.



(b) The secretary may authorize a leave, for a juvenile found to have committed a violent (~~or~~) offense, a sex offense, or stalking, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Stalking" means the crime of stalking as defined in RCW 9A.46.110;

(d) "Next of kin" means a person's spouse, parents, siblings, and children.

Passed the House March 9, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

## CHAPTER 28

[Substitute House Bill 1253]

## PHYSICIAN ASSISTANTS—LICENSURE—REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to licensure of physician assistants; and amending RCW 18.57A.020, 18.57A.030, 18.57A.040, 18.57A.050, 18.71A.020, 18.71A.030, 18.71A.040, and 18.71A.050.

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

Sec. 1. RCW 18.57A.020 and 1992 c 28 s 1 are each amended to read as follows:

(1) The board shall adopt rules (~~(and regulations)~~) fixing the qualifications and the educational and training requirements for (~~(persons who may be employed)~~) licensure as an osteopathic physician((~~s~~)) assistant((~~s~~)) or ((~~who may be~~)) for those enrolled in any ((~~physician~~s~~~~)) physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and eligibility to take an examination approved by the board, providing such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program.

(2)(a) The board shall(~~(, in addition,)~~) adopt rules (~~(and regulations)~~) governing the extent to which:

(i) Physician((~~s~~)) assistant((~~s~~)) students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a training course.

(b) Such (~~(regulations)~~) rules shall provide:

((~~(1)~~)) (i) That the practice of an osteopathic physician((~~s~~)) assistant shall be limited to the performance of those services for which he or she is trained; and

((~~(2)~~)) (ii) That each osteopathic physician((~~s~~)) assistant shall practice osteopathic medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physicians at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(3) Applicants for licensure shall file an application with the board on a form prepared by the secretary with the approval of the board, detailing the education, training, and experience of the physician assistant and such other information as the board may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the board and is eligible to take the examination approved by the board;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing osteopathic medicine as an osteopathic physician assistant with reasonable skill and safety. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice as an osteopathic physician assistant.

(4) The board may approve, deny, or take other disciplinary action upon the application for a license as provided in the uniform disciplinary act, chapter 18.130 RCW. The license shall be renewed on a periodic basis as determined by the secretary under RCW 43.70.280, upon payment of a fee determined by the secretary as provided in RCW 43.70.250 and submission of a completed renewal application, in addition to any late renewal penalty fees as determined by the secretary as provided in RCW 43.70.250.

**Sec. 2.** RCW 18.57A.030 and 1986 c 259 s 95 are each amended to read as follows:

An osteopathic physician((~~s~~)) assistant as defined in this chapter may practice osteopathic medicine in this state only ~~((after authorization))~~ with the approval of the practice arrangement plan by the board and only to the extent permitted by the board. An osteopathic physician assistant who has received a license but who has not received board approval of the practice arrangement plan under RCW 18.57A.040 may not practice. An osteopathic physician((~~s~~)) assistant shall be subject to discipline by the board under the provisions of chapter 18.130 RCW.

**Sec. 3.** RCW 18.57A.040 and 1991 c 3 s 152 are each amended to read as follows:

(1) No osteopathic physician assistant practicing in this state shall ~~((utilize the services of an osteopathic physician's assistant))~~ be employed or supervised by an osteopathic physician or physician group without the approval of the board.

~~((Any))~~ (2) Prior to commencing practice, an osteopathic physician assistant licensed in this state ~~((may))~~ shall apply to the board for permission to ~~((use the services of an osteopathic physician's assistant))~~ be employed or supervised by an osteopathic physician or physician group. The ~~((application))~~ practice arrangement plan shall be ~~((accompanied by a fee determined by the secretary as provided in RCW 43.70.250,))~~ jointly submitted by the osteopathic physician or physician group and osteopathic physician assistant. The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review. The practice arrangement plan shall ~~((detail))~~ delineate the manner and extent to which the physician((~~s~~)) assistant would ~~((be used))~~ practice and be supervised~~((, shall detail the education, training, and experience of the osteopathic physician's assistant and shall provide such other information in such form as the board may require.~~

~~The board may approve or reject such applications. In addition, the board may modify the proposed utilization of the osteopathic physician's assistant, and~~

~~approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a fee determined by the secretary as provided in RCW 43.70.250)). Whenever ((it appears to the board that)) an osteopathic physician((’s)) assistant is ((being utilized)) practicing in a manner inconsistent with the ((approval granted)) approved practice arrangement plan, the board may ((withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with chapter 34.05 RCW)) take disciplinary action under chapter 18.130 RCW.~~

**Sec. 4.** RCW 18.57A.050 and 1986 c 259 s 97 are each amended to read as follows:

No osteopathic physician who ((uses the services of an)) supervises a licensed osteopathic physician((’s)) assistant in accordance with and within the terms of any permission granted by the board shall be considered as aiding and abetting an unlicensed person to practice osteopathic medicine within the meaning of RCW ((48.57.080)) 18.57.001: PROVIDED, HOWEVER, That ((any)) the supervising osteopathic physician and the osteopathic physician assistant shall retain professional and personal responsibility for any act which constitutes the practice of osteopathic medicine as defined in RCW ((48.57.130)) 18.57.001 when performed by ((a physician’s)) the physician assistant ((in his employ)).

**Sec. 5.** RCW 18.71A.020 and 1992 c 28 s 2 are each amended to read as follows:

(1) The board shall adopt rules fixing the qualifications and the educational and training requirements for ((persons who may be employed as)) licensure as a physician assistant((s)) or ((who may be)) for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and eligibility to take an examination approved by the board, provided such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. Physician assistants licensed by the board ((on)) as of June 7, 1990, shall continue to be licensed.

(2)(a) The board shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and  
 (ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence

of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the board on a form prepared by the secretary with the approval of the board, detailing the education, training, and experience of the physician assistant and such other information as the board may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the board and is eligible to take the examination approved by the board;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The board may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The board may approve, deny, or take other disciplinary action upon the application for license as provided in the uniform disciplinary act, chapter 18.130 RCW. The license shall be renewed on a periodic basis as determined by the secretary under RCW 43.70.280, upon payment of a fee determined by the secretary as provided in RCW 43.70.250, and submission of a completed renewal application, in addition to any late renewal penalty fees as determined by the secretary as provided in RCW 43.70.250. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

**Sec. 6.** RCW 18.71A.030 and 1990 c 196 s 3 are each amended to read as follows:

A physician assistant as defined in this chapter may practice medicine in this state only ~~((after authorization))~~ with the approval of the practice arrangement plan by the board and only to the extent permitted by the board. A physician assistant who has received a license but who has not received board approval of the practice arrangement plan under RCW 18.71A.040 may not practice. A physician assistant shall be subject to discipline under chapter 18.130 RCW.

**Sec. 7.** RCW 18.71A.040 and 1990 c 196 s 4 are each amended to read as follows:

(1) No physician assistant practicing in this state shall ~~((employ))~~ be employed or ~~((supervise))~~ supervised by a physician ~~((assistant))~~ or physician group without the approval of the board.

~~((Any))~~ (2) Prior to commencing practice, a physician assistant licensed in this state ~~((may))~~ shall apply to the board for permission to ~~((employ))~~ be employed or ~~((supervise))~~ supervised by a physician ~~((assistant))~~ or physician group. The ~~((application))~~ practice arrangement plan shall be jointly submitted

by the physician or physician group and physician assistant (~~and shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250. The joint application~~). The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review. The practice arrangement plan shall ((detail)) delineate the manner and extent to which the physician assistant would practice and be supervised((, shall detail the education, training, and experience of the physician assistant and shall provide such other information in such form as the board may require.

~~The board may approve or reject such applications. In addition, the board may modify the proposed practice of the physician assistant, and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed upon payment of a fee determined by the secretary as provided in RCW 43.70.250~~). Whenever ~~((it appears to the board that))~~ a physician assistant is practicing in a manner inconsistent with the ~~((approval granted))~~ approved practice arrangement plan, the medical disciplinary board may ~~((withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with chapter 18.130 RCW))~~ take disciplinary action under chapter 18.130 RCW.

**Sec. 8.** RCW 18.71A.050 and 1990 c 196 s 5 are each amended to read as follows:

No physician who supervises a licensed physician assistant in accordance with and within the terms of any permission granted by the medical examining board shall be considered as aiding and abetting an unlicensed person to practice medicine(~~(: PROVIDED, HOWEVER, That any)~~). The supervising physician and physician assistant shall retain professional and personal responsibility for any act which constitutes the practice of medicine as defined in RCW ((18.71.010)) 18.71.011 when performed by ((a)) the physician assistant ((in the physician's employ)).

Passed the House March 8, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

**CHAPTER 29**

[House Bill 1255]

**PODIATRIC PHYSICIANS AND SURGEONS—ONE YEAR OF POSTGRADUATE  
TRAINING REQUIRED****Effective Date: 7/25/93**

AN ACT Relating to eligibility requirements for podiatric physicians and surgeons; amending RCW 18.22.040; and adding a new section to chapter 18.22 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 18.22 RCW to read as follows:

The board may grant approval to issue a license without examination to a podiatric physician and surgeon in a board-approved postgraduate training program in this state if the applicant files an application and meets all the requirements for licensure set forth in RCW 18.22.040 except for completion of one year of postgraduate training. The secretary shall issue a postgraduate podiatric medicine and surgery license that permits the physician to practice podiatric medicine and surgery only in connection with his or her duties in the postgraduate training program. The postgraduate training license does not authorize the podiatric physician to engage in any other form of practice. Each podiatric physician and surgeon in postgraduate training shall practice podiatric medicine and surgery under the supervision of a physician licensed in this state under this chapter, or chapter 18.71 or 18.57 RCW, but such supervision shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the podiatric medical board as set forth in this chapter and chapter 18.130 RCW.

Persons applying for licensure pursuant to this section shall pay an application and renewal fee determined by the secretary as provided in RCW 43.70.250. Postgraduate training licenses may be renewed annually. Any person who obtains a license pursuant to this section may apply for licensure under this chapter but shall submit a new application form and comply with all other licensing requirements of this chapter.

**Sec. 2.** RCW 18.22.040 and 1990 c 147 s 8 are each amended to read as follows:

Before any person may take an examination for the issuance of a podiatric physician and surgeon license, the applicant shall submit a completed application and a fee determined by the secretary as provided in RCW 43.70.250. The applicant shall also furnish the secretary and the board with satisfactory proof that:

- (1) The applicant has not engaged in unprofessional conduct as defined in chapter 18.130 RCW and is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment;
- (2) The applicant has satisfactorily completed a course in an approved school of podiatric medicine and surgery;

(3) The applicant has completed one year postgraduate podiatric medical training in a program approved by the board, provided that applicants graduating before July 1, 1993, shall be exempt from the postgraduate training requirement.

- Passed the House March 11, 1993.
- Passed the Senate April 1, 1993.
- Approved by the Governor April 14, 1993.
- Filed in Office of Secretary of State April 14, 1993.

**CHAPTER 30**

[House Bill 1400]

**REAL ESTATE APPRAISERS—LICENSING REQUIREMENTS FOR**

**Effective Date: 7/25/93**

AN ACT Relating to real estate appraisers; amending RCW 18.140.005, 18.140.010, 18.140.020, 18.140.030, 18.140.040, 18.140.060, 18.140.070, 18.140.080, 18.140.090, 18.140.100, 18.140.110, 18.140.120, 18.140.130, 18.140.140, 18.140.150, 18.140.160, 18.140.170, 18.140.180, 18.140.190, and 18.140.900; adding new sections to chapter 18.140 RCW; creating a new section; and repealing RCW 18.140.911.

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

**Sec. 1.** RCW 18.140.005 and 1989 c 414 s 1 are each amended to read as follows:

It is the intent of the legislature that only individuals who meet and maintain minimum standards of competence and conduct may provide certified or licensed appraisal services to the public.

**Sec. 2.** RCW 18.140.010 and 1989 c 414 s 3 are each amended to read as follows:

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

(1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate, for or in expectation of compensation. An appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value.

(2) "Appraisal report" means any communication, written or oral, of an appraisal, except that all appraisal reports in federally related transactions are required to be written reports.

(3) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified



interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

~~(4) ("Board" means the certified real estate appraiser certification board.~~

~~(5))~~ "Certified appraisal" means an appraisal prepared or signed by a state-certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(5) "Committee" means the real estate appraiser advisory committee of the state of Washington.

(6) "Department" means the department of licensing.

(7) "Director" means the director of the department of licensing.

(8) "Licensed appraisal" means an appraisal prepared or signed by a state-licensed real estate appraiser. A licensed appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(9) "Real estate" means an identified parcel or tract of land, including improvements, if any.

~~((9))~~ (10) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

~~((10))~~ (11) "Specialized appraisal services" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

~~((11))~~ (12) "State-certified general real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of property. A state-certified general real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

(13) "State-certified residential real estate appraiser" means a person (who) certified by the director to develop((s)) and communicate((s)) real estate appraisals ((and who holds a valid certificate issued to him or her for either general or residential real estate under this chapter)) of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value as specified in rules adopted by the director. A ((state-certificated)) state certified residential real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal." ((and indicate which type of certification is held.))

(14) "State-licensed real estate appraiser" means a person licensed by the director to develop and communicate real estate appraisals of noncomplex one to four residential units and complex one to four residential units and nonresidential property having transaction values as specified in rules adopted by the director.

Sec. 3. RCW 18.140.020 and 1989 c 414 s 4 are each amended to read as follows:

(1) No person, other ~~((that [than]))~~ than a state-certified or state-licensed real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state. A person who is not certified or licensed under this chapter shall not describe or refer to any appraisal ~~((of))~~ of real estate located in this state by the term "certified" or "licensed."

(2) This section does not preclude a person who is not certified or licensed as a state-certified or state-licensed real estate appraiser from appraising real estate in this state for compensation, except in federally related transactions requiring licensure or certification to perform appraisal services.

Sec. 4. RCW 18.140.030 and 1989 c 414 s 7 are each amended to read as follows:

The director shall have the following powers and duties:

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) To receive and approve or deny applications for certification or licensure as a state-certified or state-licensed real estate appraiser under this chapter; to establish appropriate administrative procedures for the processing of such applications; to issue certificates or licenses to qualified applicants pursuant to the provisions of this chapter; and to maintain a register of the names and addresses of individuals who are currently certified or licensed under this chapter;

(3) To establish, provide administrative assistance ~~((to))~~, and appoint the members for the real estate appraiser ~~((certification board))~~ advisory committee to enable the ~~((board))~~ committee to ~~((carry out its responsibilities under this chapter))~~ act in an advisory capacity to the director;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification or licensure examinations;

(5) To administer or contract for administration of certification or licensure examinations at locations and times as may be required to carry out the responsibilities under this chapter;

(6) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(7) To consider recommendations by the real estate appraiser ~~((certification board))~~ advisory committee relating to the experience, education, and examination requirements for each classification of state-certified appraiser and for licensure;

~~((7))~~ (8) To impose continuing education requirements as a prerequisite to renewal of certification or licensure;

~~((8))~~ (9) To consider recommendations by the real estate appraiser ~~((certification board))~~ advisory committee relating to standards of professional appraisal practice in the enforcement of this chapter;

~~((9) To issue an annual statement describing the receipts and expenditures in the administration of this chapter during each fiscal year;))~~

(10) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

(11) To establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the provisions of this chapter;

~~((11))~~ (12) To compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths; and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the director or the director's authorized representatives acting by authority of law;

~~((12))~~ (13) To take emergency action ordering summary suspension of a license or certification pending proceedings by the director;

(14) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

~~((13))~~ (15) To establish forms necessary to administer this chapter; ((and

~~(14))~~ (16) To adopt standards of professional conduct or practice; and

(17) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification or licensure of appraisers that the director determines are appropriate for state-certified and state-licensed appraisers in this state.

**Sec. 5.** RCW 18.140.040 and 1989 c 414 s 8 are each amended to read as follows:

The director(~~, members of the board,~~) or individuals acting on ~~(their)~~ behalf of the director are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties except for their intentional or willful misconduct.

**Sec. 6.** RCW 18.140.060 and 1989 c 414 s 10 are each amended to read as follows:

(1) Applications for examinations, original certification or licensure, and renewal certification or licensure shall be made in writing to the department on forms approved by the director. Applications for original and renewal certification or licensure shall include a statement confirming that the applicant shall comply with applicable rules and regulations and that the applicant understands the penalties for misconduct.

(2) The appropriate fees shall accompany all applications for examination, reexamination, original certification or licensure, and renewal certification or licensure.

**Sec. 7.** RCW 18.140.070 and 1989 c 414 s 11 are each amended to read as follows:

There shall be one category of state-licensed real estate appraisers and two categories of state-certified real estate appraisers as follows:

(1) The ~~((state-certified-residential))~~ state-licensed real estate appraiser ~~((classification shall consist of those persons meeting the requirements for appraisal of residential real property of one to four units.));~~

(2) The state-certified ~~((general))~~ residential real estate appraiser ~~((classification shall consist of those persons meeting the requirements for certification relating to the appraisal of all types of real property.));~~

(3) The state-certified general real estate appraiser.

**Sec. 8.** RCW 18.140.080 and 1989 c 414 s 12 are each amended to read as follows:

~~(((4)))~~ As a prerequisite to taking ~~((the))~~ an examination for certification ~~((as a state-certified-general-real-estate-appraiser))~~ or licensure, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director.

~~(((2))~~ As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director.

~~(3)~~ The education requirements of subsections (1) and (2) of this section may be waived by the director if the applicant presents evidence to the satisfaction of the director that the applicant was practicing as a real estate appraiser in the state of Washington on July 1, 1990.))

**Sec. 9.** RCW 18.140.090 and 1989 c 414 s 13 are each amended to read as follows:

As a prerequisite to taking ~~((the))~~ an examination for certification ~~((as a state-certified-real-estate-appraiser))~~ or licensure, an applicant must meet the experience requirements adopted by the director.

**Sec. 10.** RCW 18.140.100 and 1989 c 414 s 14 are each amended to read as follows:

An original ~~((certification as a state-certified-real-estate-appraiser))~~ license or certificate shall be issued to persons who have satisfactorily passed ~~((a))~~ the written examination as endorsed by the Appraiser Qualifications Board of the Appraisal Foundation and as adopted by the director.

**Sec. 11.** RCW 18.140.110 and 1989 c 414 s 15 are each amended to read as follows:

Every applicant for licensing or certification who is not a resident of this state shall submit, with the application for licensing or certification, an irrevocable consent that service of process upon him or her may be made by service on the director if, in an action against the applicant in a court of this state arising out of the applicant's activities as a state-licensed or state-certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

**Sec. 12.** RCW 18.140.120 and 1989 c 414 s 16 are each amended to read as follows:

An applicant for licensure or certification who is currently licensed or certified and in good standing under the laws of another state may obtain a license or certificate as a Washington state-licensed or state-certified real estate appraiser without being required to satisfy the examination requirements of this chapter if: The director determines that the licensure or certification requirements are substantially similar to those found in Washington state; and that the other state has a written reciprocal agreement to provide similar treatment to holders of Washington state licenses and/or certificates.

**Sec. 13.** RCW 18.140.130 and 1989 c 414 s 17 are each amended to read as follows:

(1) Each original and renewal license or certificate issued under this chapter shall ~~((be for a period of two years))~~ expire on the applicant's second birthday following issuance of the license or certificate.

(2) To be renewed as a state-licensed or state-certified real estate appraiser, the holder of a valid license or certificate shall apply and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date of the license or certificate and shall demonstrate satisfaction of any continuing education requirements.

(3) If a person fails to renew a license or certificate prior to its expiration and no more than two years have passed since the person last held a valid license or certificate, the person may obtain a renewal license or certificate by satisfying all of the requirements for renewal and paying late renewal fees.

The director shall cancel the license or certificate of any person whose renewal fee is not received within two years from the date of expiration. A person may obtain a new license or certificate by satisfying the procedures and qualifications for initial licensure or certification, including the successful completion of any applicable examinations.

**Sec. 14.** RCW 18.140.140 and 1989 c 414 s 18 are each amended to read as follows:

(1) A license or certificate issued under this chapter shall bear the signature or facsimile signature of the director and a license or certificate number assigned by the director.

(2) Each state-licensed or state-certified real estate appraiser shall place his or her certificate number adjacent to or immediately below the title "state-licensed real estate appraiser," "state-certified residential real estate appraiser," or "state-certified general real estate appraiser" when used in an appraisal report or in a contract or other instrument used by the licensee or certificate holder in conducting real property appraisal activities.

**Sec. 15.** RCW 18.140.150 and 1989 c 414 s 19 are each amended to read as follows:

(1) The term "state-licensed" or "state-certified real estate appraiser" may only be used to refer to individuals who hold the license or certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, or group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group, or anyone other than an individual holder of the license or certificate.

(2) No license or certificate may be issued under this chapter to a corporation, partnership, firm, or group. This shall not be construed to prevent a state-licensed or state-certified appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice.

**NEW SECTION. Sec. 16.** A new section is added to chapter 18.140 RCW to read as follows:

(1) A real estate appraiser from another state who is licensed or certified by another state may apply for registration to receive temporary licensing or certification in Washington by paying a fee and filing a notarized application with the department on a form provided by the department.

(2) Licensing and certification privileges granted under the provisions of this section shall expire ninety days from issuance. Licensing or certification shall not be renewed, nor shall an applicant receive more than two registrations within any twelve-month period.

(3) Persons granted temporary licensing or certification privileges under this section shall not advertise or otherwise hold themselves out as being licensed or certified by the state of Washington.

(4) Persons granted temporary licensure or certification are subject to all provisions under this chapter.

**Sec. 17.** RCW 18.140.160 and 1989 c 414 s 20 are each amended to read as follows:

An application for licensure or certification (~~((or recertification))~~) may be denied(~~(, and the certification of any state-certified real estate appraiser may be revoked, suspended,)~~). The director may impose any one or more of the following sanctions against state-licensed or state-certified appraisers: Suspend, revoke, or levy a fine not to exceed one thousand dollars for each offense and/or otherwise ((disciplined)) discipline in accordance with the provisions of this chapter, for any of the following acts or omissions:

(1) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this chapter;

(2) Procuring or attempting to procure state licensure or certification under this chapter by knowingly making a false statement, knowingly submitting false information, or knowingly making a material misrepresentation on any application filed with the director;

(3) Paying money other than the fees provided for by this chapter to any employee of the director or the (~~(board))~~ committee to procure state licensure or certification under this chapter;

(4) Obtaining a license or certification through the mistake or inadvertence of the director;

(5) Conviction of any gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license or certificate holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(6) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

~~((5))~~ (7) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

~~((6))~~ (8) Continuing to act as a state-licensed or state-certified real estate appraiser when his or her license or certificate is on an expired status;

~~((7))~~ (9) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of the director or the director's authorized representatives acting by authority of law; ~~(and~~

~~(8))~~ (10) Violating any provision of this chapter or any lawful rule or regulation made by the director pursuant thereto;

(11) Advertising in a false, fraudulent, or misleading manner;

(12) Suspension, revocation, or restriction of the individual's license or certification to practice the profession by competent authority in any state, federal, or foreign jurisdiction, with a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(13) Failing to comply with an order issued by the director;

(14) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, with a certified copy of the final holding of any court of competent jurisdiction in such matter being conclusive evidence in any hearing under this chapter; and

(15) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report.

**Sec. 18.** RCW 18.140.170 and 1989 c 414 s 21 are each amended to read as follows:

The director may investigate the actions of a state-licensed or state-certified real estate appraiser or an applicant for licensure or certification or relicensure or recertification. Upon receipt of information indicating that a state-licensed or

state-certified real estate appraiser under this chapter may have violated this chapter, the director shall cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical assistance is required, a staff investigator may consult with ~~((not)) one or more ((than one)) of the ((appraiser)) members of the ((board. If an appraiser member of the board is consulted and renders assistance in an investigation, the appraiser member is excused from service on the board in connection with any administrative hearing that may result from such investigation))~~ committee.

In any investigation made by the director's investigative staff, the director shall have the power to compel the attendance of witnesses and the production of books, documents, records, and other papers, to administer oaths, and to take testimony and receive evidence concerning all matters within the director's jurisdiction.

If the director determines, upon investigation, that a state-licensed or state-certified real estate appraiser under this chapter has violated this chapter, a statement of charges shall be prepared and served upon the state-licensed or state-certified real estate appraiser. This statement of charges shall require the accused party to file an answer to the statement of charges within twenty days of the date of service.

In responding to a statement of charges, the accused party may admit to the allegations, deny the allegations, or otherwise ~~((plea))~~ plead. Failure to make a timely response shall be deemed an admission of the allegations contained in the statement of charges and will result in a default whereupon the director may enter an order under RCW 34.05.440. If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the accused. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of hearing.

NEW SECTION. Sec. 19. A new section is added to chapter 18.140 RCW to read as follows:

(1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible, the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent.

At the time the temporary cease and desist order is served, the person shall be notified that he or she is entitled to request a hearing for the sole purpose of determining whether the public interest requires that the temporary cease and



desist order be continued or modified pending the outcome of the hearing to determine whether the order will become permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the person requests a later hearing. A person may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as an adjudicative proceeding.

**Sec. 20.** RCW 18.140.180 and 1989 c 414 s 22 are each amended to read as follows:

The administrative hearing on the allegations in the statement of charges may be heard by ~~((the board or))~~ an administrative law judge appointed under chapter 34.12 RCW at the time and place prescribed by the director and in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. If the ~~((board or the))~~ administrative law judge determines that a state-licensed or state-certified real estate appraiser is guilty of a violation of any of the provisions of this chapter, a formal decision shall be prepared that contains findings of fact and recommendations to the director concerning the appropriate disciplinary action to be taken.

In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the addresses of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any ~~((licensee or applicant))~~ party aggrieved by a final decision by the director in an adjudicative proceeding whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec. 21.** RCW 18.140.190 and 1989 c 414 s 23 are each amended to read as follows:

The attorney general shall render to the director ~~((and board))~~ opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof that may be submitted by the director ~~((or board))~~, and shall act as attorney for the director ~~((and board))~~ in all actions and proceedings brought by or against the director ~~((and board))~~ under or pursuant to any provisions of this chapter.

**Sec. 22.** RCW 18.140.900 and 1989 c 414 s 2 are each amended to read as follows:

This chapter may be known and cited as the ~~((certified))~~ real estate appraiser act.

**NEW SECTION. Sec. 23.** The department shall identify and notify all holders of state-certified residential appraiser certificates that their certificates will be converted to the designation of state-licensed real estate appraiser if they have not met the educational requirements for state-certified residential appraiser as prescribed by the director and the Appraiser Qualifications Board of the Appraisal Foundation. The department shall issue licenses with the new

designation which reflects the person's qualifications as prescribed by the director.

NEW SECTION. Sec. 24. RCW 18.140.911 and 1989 c 414 s 27 are each repealed.

Passed the House March 10, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

## CHAPTER 31

[Substitute House Bill 1578]

### DEPARTMENT OF CORRECTIONS—SUPERVISION AND MONITORING OF OFFENDERS—REVISED RESPONSIBILITIES

Effective Date: 7/25/93

AN ACT Relating to the clarification of responsibility to monitor criminally insane offenders, track sentences, clarify tolling provisions, and charge offenders for special services; amending RCW 10.98.110, 9.94A.170, 10.77.010, 10.77.020, 10.77.150, 10.77.160, 10.77.165, 10.77.180, 10.77.190, 10.77.200, and 10.77.210; reenacting and amending RCW 9.94A.120; and prescribing penalties.

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

**Sec. 1.** RCW 10.98.110 and 1987 c 462 s 2 are each amended to read as follows:

(1) The department shall maintain records to track felony cases (~~following convictions in Washington state~~) for convicted felons sentenced either to a term of confinement exceeding one year or ordered under the supervision of the department and felony cases under the jurisdiction of (~~Washington state~~) the department pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a (~~disposition~~) judgment and sentence form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from (~~conviction~~) the time of sentencing through (~~completion of sentence~~) discharge.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol identification and criminal history section, the office of financial management, and any other public or private agency that provides services to help individuals complete their felony sentences.

**Sec. 2.** RCW 9.94A.170 and 1988 c 153 s 9 are each amended to read as follows:

(1) A term of confinement, including community custody, ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented him or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in

total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) A term of supervision, including postrelease supervision ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is later found not to have violated a condition or requirement of supervision, time spent in confinement due to such detention shall not toll to period of supervision.

(4) For confinement or supervision sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision. ~~((For sentences involving supervision, the date for the tolling of the sentence shall be established by the court, based on reports from the entity responsible for the supervision.))~~

**Sec. 3.** RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992 c 45 s 5 are each reenacted and amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under

contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (7) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (7) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the

evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The



community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed,

and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment. The department may require offenders to pay for special services rendered on or after the effective date of this act, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(13) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(15) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(16) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(18) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(19) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

**Sec. 4.** RCW 10.77.010 and 1989 c 420 s 3 are each amended to read as follows:

As used in this chapter:

(1) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(2) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(3) "Secretary" means the secretary of the department of social and health services or his or her designee.

(4) "Department" means the state department of social and health services.

(5) "Treatment" means any currently standardized medical or mental health procedure including medication.

(6) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(7) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute "insanity".

(8) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(9) "Developmental disability" means the condition defined in RCW 71A.10.020(2).

(10) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(11) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

(12) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(13) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW.

(14) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(15) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

**Sec. 5.** RCW 10.77.020 and 1974 ex.s. c 198 s 2 are each amended to read as follows:

(1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

(a) The nature of the charges;

(b) The statutory offense included within them;

(c) The range of allowable punishments thereunder;

(d) Possible defenses to the charges and circumstances in mitigation thereof; and

(e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by it to be fair and reasonable.

(3) Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his or her acquittal of a crime charged by reason of insanity, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which ~~(he)~~ the person was acquitted by reason of insanity. If at the end of that period the person has not been finally discharged and is still in need of commitment or treatment, civil commitment proceedings may be instituted, if appropriate.

(4) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, ~~(he)~~ the defendant shall be entitled to have his or her attorney present. The defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

Sec. 6. RCW 10.77.150 and 1982 c 112 s 1 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140, as now or hereafter amended, may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered ~~((his))~~ the person's commitment the person's application for conditional release as well as ~~((his))~~ the secretary's recommendations concerning the application and any proposed terms and conditions upon which ~~((he))~~ the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) The court of the county which ordered ~~((his))~~ the person's commitment, upon receipt of an application for conditional release with the secretary's recommendation for conditional release, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary. The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of ~~((his))~~ the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine ~~((him))~~ the person on his or her behalf. The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer prior to making any change in the offender's address or employment.

(3) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other ~~((person))~~ medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other

~~((person))~~ medical or mental health practitioner shall immediately upon the released person's failure to appear for the medication or treatment report the failure to the court ~~((and)),~~ to the prosecuting attorney of the county in which the released person was committed, and to the supervising community corrections officer.

(4) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial.

**Sec. 7.** RCW 10.77.160 and 1973 1st ex.s. c 117 s 16 are each amended to read as follows:

When a conditionally released person is required by the terms of his or her conditional release to report to a physician, ~~((probation officer, or other such person))~~ department of corrections community corrections officer, or medical or mental health practitioner on a regular or periodic basis, the ~~((doctor, probation))~~ physician, department of corrections community corrections officer, medical or mental health practitioner, or other such person shall monthly, for the first six months after release and semiannually thereafter, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county in which the person was committed, a report stating whether the person is adhering to the terms and conditions of his or her conditional release.

**Sec. 8.** RCW 10.77.165 and 1990 c 3 s 107 are each amended to read as follows:

In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person on conditional release to the department of social and health services, the superintendent, or in the event of a disappearance of such a person on conditional release to the department of corrections, the community corrections officer shall ~~((notify)),~~ as appropriate, notify local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. The notice provisions of this section are in addition to those provided in RCW 10.77.205.

**Sec. 9.** RCW 10.77.180 and 1974 ex.s. c 198 s 14 are each amended to read as follows:

Each person conditionally released pursuant to RCW 10.77.150, as now or hereafter amended, shall have his or her case reviewed by the court which conditionally released him or her no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary of social and health services, the secretary of corrections, medical or mental health practitioner, or the prosecuting attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic

reports filed pursuant to RCW 10.77.140, as now or hereafter amended, and RCW 10.77.160, and the opinions of the secretary of social and health services and other experts or professional persons.

**Sec. 10.** RCW 10.77.190 and 1982 c 112 s 2 are each amended to read as follows:

(1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his or her conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his or her conditional release the court or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court or secretary of social and health services or the secretary of corrections shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his or her conditional release shall be revoked and he or she shall be committed subject to release only in accordance with provisions of this chapter.

**Sec. 11.** RCW 10.77.200 and 1989 c 420 s 11 are each amended to read as follows:

(1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for final discharge. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the



secretary approves the final discharge he or she then shall authorize said person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for final discharge, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of ~~((his))~~ the prosecuting attorney's choice. If the petitioner is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the petitioner is developmentally disabled, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner ~~((may be finally discharged without substantial danger to other persons, and without presenting))~~ no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning the court for final discharge or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus.

**Sec. 12.** RCW 10.77.210 and 1990 c 3 s 108 are each amended to read as follows:

Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. Except as provided in RCW 10.77.205 and 4.24.550 regarding the release of information concerning insane offenders who are acquitted of sex offenses and subsequently committed pursuant to this chapter, all records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the supervising community corrections officer, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper

showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the indeterminate sentence review board if the person was on parole ((øf)), probation, or community supervision at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter.

Passed the House March 11, 1993.

Passed the Senate March 27, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 32

[Substitute House Bill 1480]

### PARK TRAILERS—TAXATION AS REAL PROPERTY

Effective Date: 7/25/93

AN ACT Relating to taxation of travel trailers and campers; amending RCW 82.50.530; and creating a new section.

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

**Sec. 1.** RCW 82.50.530 and 1981 c 304 s 32 are each amended to read as follows:

No mobile home, travel trailer, or camper which is a part of the inventory of mobile homes, travel trailers, or campers held for sale by a dealer in the course of his or her business and no travel trailer or camper as defined in RCW 82.50.010 shall be listed and assessed for ad valorem taxation. However, if a park trailer as defined in RCW 46.04.622 has substantially lost its identity as a mobile unit by virtue of its being permanently fixed in location upon land owned or leased by the owner of the park trailer and placed on a permanent foundation of either posts or blocks with fixed pipe connections with sewer, water, or other utilities it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with the provisions of Title 84 RCW, including the provisions with respect to omitted property, except that a park trailer located on land leased by the owner of the park trailer shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

**NEW SECTION.** **Sec. 2.** Section 1 of this act shall be effective for taxes levied for collection in 1993 and thereafter.

Passed the House March 9, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 33

[Engrossed House Bill 1481]

## SHIPS AND VESSELS—TAXATION OF—REVISED PROVISIONS

Effective Date: 1/1/94

AN ACT Relating to taxation of ships and vessels; amending RCW 82.49.060, 84.40.065, 84.40.150, 84.40.190, and 84.40.200; adding a new section to chapter 84.56 RCW; making an appropriation; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 82.49.060 and 1983 c 7 s 13 are each amended to read as follows:

(1) Any vessel owner disputing an appraised value under RCW 82.49.050 or disputing whether the vessel is taxable, may petition for a conference with the department as provided under RCW 82.32.160, or for reduction of the tax due as provided under RCW 82.32.170.

(2) Any vessel owner having received a notice of denial of a petition or a notice of determination made for the owner's vessel under RCW 82.32.160 or 82.32.170 may appeal to the board of tax appeals as provided under RCW 82.03.190. In deciding a case appealed under this section, the board of tax appeals may require an independent appraisal of the vessel. The cost of the independent appraisal shall be apportioned between the department and the vessel owner as provided by the board.

**Sec. 2.** RCW 84.40.065 and 1986 c 229 s 3 are each amended to read as follows:

(1) Every individual, corporation, association, partnership, trust, and estate shall list with the department of revenue all ships and vessels which are subject to their ownership, possession, or control and which are not entirely exempt from property taxation, and such listing shall be subject to the same requirements ~~((,))~~ and penalties ~~((, and liens))~~ provided in this chapter ~~((and chapter 84.60 RCW))~~ for all other personal property in the same manner as provided ~~((therein))~~ in this chapter, except as may be specifically provided otherwise with respect to ships and vessels.

(2) The listing of ships and vessels shall be accomplished in the manner and upon forms prescribed by the department. Upon listing, the department shall assign a tax identification number for each vessel listed.

(3) The department shall assess all ships and vessels and shall ((certify to the respective county assessors the equalized values thereof, subject to the same rules as other state assessed properties in accordance with RCW 84.12.370 and 84.16.130 and chapter 84.48 RCW)), on or before January 31st of each year, mail to the owner of a ship or vessel, or to the person listing the ship or vessel if different from the owner, a notice showing the valuation of the ship or vessel assessed. Taxes due the following year shall be based upon the valuation. On or after February 15, but no later than thirty days before April 30, the department shall mail to the owner of a ship or vessel, or to the person listing the ship or vessel if different from the owner, a tax statement showing the valuation for the

previous year of the ship or vessel assessed and the amount of tax owed for the current year.

~~((3))~~ (4) Any ship or vessel owner, or person listing the ship or vessel if different from the owner, disputing the assessment or disputing whether the ship or vessel is subject to taxation under this section shall have the same rights of review as any other ship or vessel owner subject to the excise tax contained in chapter 82.49 RCW in accordance with RCW 82.49.060.

**Sec. 3.** RCW 84.40.150 and 1961 c 15 s 84.40.150 are each amended to read as follows:

If any person required to list property for taxation and provide the assessor with the list, is prevented by sickness or absence from giving to the assessor such statement, such person or his or her agent having charge of such property, may, at any time before the close of the session of the board of equalization, make out and deliver to said board a statement of the same as required by this title, and the board shall, in such case, make an entry thereof, and correct the corresponding item or items in the return made by the assessor, as the case may require; but no such statement shall be received by the said board from any person who refused or neglected to make oath to his or her statement when required by the assessor as provided herein; nor from any person unless he or she makes and files with the said board an affidavit that he or she was absent from his or her county, without design to avoid the listing of his or her property, or was prevented by sickness from giving the assessor the required statement when called on for that purpose.

**Sec. 4.** RCW 84.40.190 and 1967 ex.s. c 149 s 39 are each amended to read as follows:

Every person required by this title to list property shall make out and deliver to the assessor, or to the department as required by RCW 84.40.065, either in person or by mail, a statement, verified under penalty of perjury, of all the personal property in his or her possession or under his or her control, and which, by the provisions of this title, he or she is required to list for taxation, either as owner or holder thereof. Each list, schedule or statement required by this chapter shall be signed by the individual if the person required to make the same is an individual; by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to so act if the person required to make the same is a corporation; by a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the same is a partnership or other unincorporated organization; or by the fiduciary, if the person required to make the same is a trust or estate. The list, schedule, or statement may be made and signed for the person required to make the same by an agent who is duly authorized to do so by a power of attorney filed with and approved by the assessor. When any list, schedule, or statement is made and signed by such agent, the principal required to make out and deliver the same shall be responsible for the contents and the filing thereof and shall be

liable for the penalties imposed pursuant to RCW 84.40.130. No person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the department of revenue, or as otherwise required by law.

**Sec. 5.** RCW 84.40.200 and 1987 c 319 s 3 are each amended to read as follows:

(1) In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property and assess the same at such amount as he or she believes to be the true value thereof.

(2) The assessor, in all cases of the assessment of personal property, shall deliver or mail to the person assessed, or to the person listing the property, a copy of the statement of property hereinbefore required, showing the valuation of the property so listed.

(3) This section does not apply to the listing required under RCW 84.40.065.

**NEW SECTION. Sec. 6.** A new section is added to chapter 84.56 RCW to read as follows:

(1) The department of revenue shall collect all ad valorem taxes upon ships and vessels listed with the department in accordance with RCW 84.40.065 and all applicable interest and penalties.

The taxes shall be due and payable to the department on or before the thirtieth day of April and shall be delinquent after that date.

(2) If payment of the tax is not received by the department by the due date, there shall be imposed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be imposed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be imposed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than five dollars.

(3) Delinquent taxes under this section are subject to interest at the rate set forth in RCW 82.32.050 from the date of delinquency until paid. Interest or penalties collected on delinquent taxes under this section shall be paid by the department into the general fund of the state treasury.

(4) If upon information obtained by the department it appears that any ship or vessel required to be listed according to the provisions of RCW 84.40.065 is not so listed, the department shall value the ship or vessel and assess against the owner of the vessel the taxes found to be due and shall add thereto interest at the rate set forth in RCW 82.32.050 from the original due date of the tax until the date of payment. The department shall notify the vessel owner by mail of the amount and the same shall become due and shall be paid by the vessel owner

within thirty days of the date of the notice. If payment is not received by the department by the due date specified in the notice, the department shall add a penalty of ten percent of the tax found due. A person who willfully gives a false listing or willfully fails to list a ship or vessel as required by RCW 84.40.065 shall be subject to the penalty imposed by RCW 84.40.130(2), which shall be assessed and collected by the department.

(5) Delinquent taxes under this section, along with all penalties and interest thereon, shall be collected by the department according to the procedures set forth in chapter 82.32 RCW for the filing and execution of tax warrants, including the imposition of warrant interest. In the event a warrant is issued by the department for the collection of taxes under this section, the department shall add a penalty of five percent of the amount of the delinquent tax, but not less than ten dollars.

(6) The department shall also collect all delinquent taxes pertaining to ships and vessels appearing on the records of the county treasurers for each of the counties of this state as of December 31, 1993, including any applicable interest or penalties. The provisions of subsection (5) of this section shall apply to the collection of such delinquent taxes.

NEW SECTION. Sec. 7. The sum of one hundred thirty-seven thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1995, from the general fund to the department of revenue for the purposes of this act.

NEW SECTION. Sec. 8. This act shall take effect January 1, 1994.

Passed the House March 15, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

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## CHAPTER 34

[Substitute House Bill 1527]

### DEPENDENT CARE PROGRAM—FUNDS ADMINISTRATION—REVISED PROVISIONS

Effective Date: 7/1/93

AN ACT Relating to funding of the dependent care program; amending RCW 41.04.615 and 41.04.260; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 41.04.615 and 1987 c 475 s 4 are each amended to read as follows:

(1) A plan document describing the salary reduction plan shall be adopted and administered by the committee. The committee shall represent the state in all matters concerning the administration of the plan. The state through the committee, may engage the services of a professional consultant or administrator

on a contractual basis to serve as an agent to assist the committee in carrying out the purposes of RCW 41.04.600 through 41.04.645.

(2) The committee shall formulate and establish policies and procedures for the administration of the salary reduction plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) The funds held by the state for the dependent care program shall be deposited in the salary reduction account in the state treasury. Any interest in excess of the amount used to defray the cost of administering the salary reduction plan shall become a part of the general fund ~~((as shall))~~. Unclaimed moneys remaining in the salary reduction account at the end of a plan year after all timely submitted claims for that plan year have been processed shall become a part of the dependent care administrative account. The committee may assess each participant a fee for administering the salary reduction plan. In addition to moneys for initial costs, moneys ~~((shall))~~ may be appropriated from the general fund or dependent care administrative account for any expense relating to the administration of the salary reduction plan. ~~((The appropriation may be funded from an amount equivalent to actually realized savings experienced due to reductions in employer contributions required under the social security act, from other similar savings, from interest earned from the salary reduction account credited to the general fund, from any unclaimed moneys in the salary reduction account at the end of the plan year, and from fees charged to the participants.))~~

(4) The dependent care administrative account is created in the state treasury. The committee may periodically bill agencies for employer savings experienced as the result of dependent care program participation by employees. All receipts from the following shall be deposited in the account: (a) Charges to agencies for all or a portion of the estimated savings due to reductions in employer contributions under the social security act; (b) charges for other similar savings; (c) unclaimed moneys in the salary reduction account at the end of the plan year after all timely submitted claims for that plan year have been processed; and (d) fees charged to participants. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for any expense related to the administration of the salary reduction plan.

(5) Every action taken by the committee in administering RCW 41.04.600 through 41.04.645 shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The committee shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence.

Sec. 2. RCW 41.04.260 and 1991 sp.s. c 13 s 101 are each amended to read as follows:

(1) There is hereby created a committee for deferred compensation to be composed of five members appointed by the governor, one of whom shall be a representative of an employee association or union certified as an exclusive representative of at least one bargaining unit of classified employees, one who shall be a representative of either a credit union, savings and loan association, mutual savings bank or bank, one who possesses expertise in the area of insurance or investment of public funds, one who shall be the state attorney general or his designee, and one additional member selected by the governor. The committee shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The deferred compensation principal account is hereby created in the state treasury. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from that account over earnings of investments of balances credited to that account shall be eliminated by transferring moneys to that account from the deferred compensation principal account.

The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.04.250 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by this committee. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.04.250. All eligible state employees shall be given the opportunity to participate in agreements entered into by the committee under RCW 41.04.250. State agencies shall cooperate with the committee in providing employees with the opportunity to participate. Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the committee under RCW 41.04.250, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein. All moneys in the deferred compensation principal account, all property and rights purchased therewith, and all income attributable thereto, shall remain (until made available to the participating employee or other beneficiary) solely the money, property, and rights of the state and participating counties, municipalities and subdivisions (without being restricted to the provision of benefits under the plan) subject only to the claims of the state's and participating jurisdictions' general creditors. Participating jurisdictions shall each retain property rights separately.

(3) The state investment board, at the request of the deferred compensation committee, is authorized to invest moneys in the deferred compensation principal



account in accordance with RCW 43.84.150. Except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(4) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the committee pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess of earnings of investments of balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account over earnings of investments of balances credited to this account shall be transferred to this account from the deferred compensation principal account.

(5) In addition to the duties specified in this section and RCW 41.04.250, the deferred compensation committee shall administer the salary reduction plan established in RCW 41.04.600 through 41.04.645.

(6) The deferred compensation committee shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.04.250 through 41.04.260.

The deferred compensation committee shall file an annual report of the financial condition, transactions, and affairs of the deferred compensation plans under the committee's jurisdiction. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor.

(7) Members of the deferred compensation committee shall be deemed to stand in a fiduciary relationship to the employees participating in the deferred compensation plans created under RCW 41.04.250 through 41.04.260 and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions.

(8) The committee may adopt rules necessary to carry out the purposes of RCW 41.04.250 and 41.04.260.

**NEW SECTION.** **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House March 15, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

## CHAPTER 35

[House Bill 1643]

## LANDSCAPE ARCHITECTS—REGISTRATION PROVISIONS REVISED

Effective Date: 7/25/93

AN ACT Relating to landscape architects; amending RCW 18.96.040, 18.96.080, 18.96.090, 18.96.100, and 18.96.150; and reenacting and amending RCW 18.96.110.

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

**Sec. 1.** RCW 18.96.040 and 1985 c 18 s 1 are each amended to read as follows:

There is created a state board of registration for landscape architects. The board shall consist of ~~((three))~~ four landscape architects and ~~((two members))~~ one member of the general public. Members of the board shall be appointed by the governor and must be residents of this state having the qualifications required by this chapter.

No public member of the board may be a past or present member of any other licensing board under this title. No public member may make his or her own livelihood from, nor have a parent, spouse, or child make their respective livelihood from providing landscape architect services, or from enterprises dealing in landscape architecture.

The landscape architect members of the board must, while serving on the board, be actively engaged in their profession or trade and, immediately preceding appointment, have had at least five years experience in responsible charge of work or teaching within their profession or trade.

**Sec. 2.** RCW 18.96.080 and 1985 c 7 s 74 are each amended to read as follows:

Application for registration shall be filed with the director prior to the date set for examination and shall contain statements made under oath showing the applicant's education and a detailed summary of ~~((his))~~ practical experience, and shall contain not less than ~~((five))~~ three references ~~((, of whom three or more shall be))~~ who are landscape architects having personal knowledge of ~~((his))~~ the applicant's landscape architectural experience.

~~((The application fee shall be determined by the director as provided in RCW 43.24.086 and shall include a nonrefundable examination fee, and a fee for issuance of the certificate.~~

~~The application fee for reexamination shall be determined by the director as provided in RCW 43.24.086 and shall include, and must be filed with the director not less than six days prior to the date set for examination.~~

~~At any time within the first two years following August 11, 1969, the board shall certify for registration, without examination, any applicant who submits proof that he has had at least a combination of education and experience substantially equivalent to six years of practice in landscape architecture prior to August 11, 1969.)~~ The application fee for initial examination shall be determined by the director as provided in RCW 43.24.086. The application and fee

must be submitted to the agency prior to the application deadline established by the director.

Fees for initial examination and reexamination shall be determined by the director as provided in RCW 43.24.086, and must be filed with the agency prior to the application deadline established by the director.

**Sec. 3.** RCW 18.96.090 and 1985 c 18 s 2 are each amended to read as follows:

Examinations of applicants for certificates of registration shall be held at least annually or at such times and places as the board may determine. The board shall determine from the examination and the material submitted with the applications whether or not the applicants possess sufficient knowledge, ability and moral fitness to safely and properly practice landscape architecture and to hold themselves out to the public as persons qualified for that practice.

The scope of the examination and methods of examination procedure shall be prescribed by the board with special reference to landscape construction materials and methods, grading and drainage, plant materials suited for use in the northwest, specifications and supervisory practice, history and theory of landscape architecture relative to landscape architectural design, site planning and land design, subdivision, urban design, and a practical knowledge of botany, horticulture and similar subjects related to the practice of landscape architecture. The board may adopt an appropriate national examination and grading procedure.

Applicants who fail to pass ~~((any subjects))~~ sections of the examination shall be permitted to retake the examination in the ~~((subjects))~~ sections failed. A passing grade in ~~((any subject area))~~ a section shall exempt the applicant from examination in that subject for five years ~~((: PROVIDED, That failure to complete successfully the entire examination within five years will result in requiring a retake of the entire examination))~~. The board may determine the standard for passing grades computed on a scale of one hundred percent. A certificate of registration shall be granted by the director to all qualified applicants who shall be certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience.

**Sec. 4.** RCW 18.96.100 and 1985 c 7 s 75 are each amended to read as follows:

The director may, upon payment of a ~~((filing and investigation))~~ reciprocity application fee ~~((including))~~ and the current registration fee in an amount as determined by the director as provided in RCW 43.24.086, grant a certificate of registration ~~((without examination))~~, upon recommendation by the board, to any applicant who is a registered landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state for registration by examination, and which extends the same privileges of reciprocity to landscape architects registered in this state.

**Sec. 5.** RCW 18.96.110 and 1985 c 18 s 3 and 1985 c 7 s 76 are each reenacted and amended to read as follows:

The renewal dates for certificates of registration shall ~~((expire on the last day of June three years following their issuance or renewal))~~ be set by the director. The director shall set the fee for renewal which shall be determined as provided in RCW 43.24.086. ~~((Renewal may be effected during the month of June by payment to the director of the required fee.~~

~~In case any))~~ If a registrant fails to pay the renewal fee ~~((before))~~ within thirty days after the ~~((due))~~ renewal date, the renewal ~~((fee shall be the current fee plus an amount equal to one year's fee at the discretion of the board: PROVIDED, That))~~ shall be delinquent. The renewal fee for a delinquent renewal and the penalty fee for a delinquent renewal shall be established by the director. Any registrant in good standing, upon fully retiring from landscape architectural practice, may withdraw from practice by giving written notice to the director, and may thereafter resume practice at any time upon payment of the then current ~~((annual))~~ renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his or her registration for a period of ~~((one year))~~ more than five years may ~~((reinstate only on reexamination as is required for new registrants))~~ be reinstated under the circumstances as the board determines.

**Sec. 6.** RCW 18.96.150 and 1969 ex.s. c 158 s 15 are each amended to read as follows:

The director shall issue a certificate of registration upon payment of the registration fee as provided in this chapter to any applicant who has satisfactorily met all requirements for registration. All certificates of registration shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman and the executive secretary of the board, and by the director.

Each registrant shall obtain a seal of a design authorized by the board, bearing the registrant's name and the legend, "registered landscape architect". All sheets of drawings and title pages of specifications prepared by the registrant shall be stamped with said seal.

Passed the House March 9, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor April 14, 1993.

Filed in Office of Secretary of State April 14, 1993.

## CHAPTER 36

[Engrossed Substitute House Bill 1320]

## FOREST FIRE PROTECTION ASSESSMENTS—REVISIONS

Effective Date: 4/15/93

AN ACT Relating to forest fire protection; amending RCW 76.04.610 and 76.04.630; and declaring an emergency.

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

**Sec. 1.** RCW 76.04.610 and 1989 c 362 s 1 are each amended to read as follows:

(1) If any owner of forest land within a forest protection zone(~~(, or any owner of forest land located where fire protection responsibility has not been mutually agreed upon as provided in RCW 76.04.165(2),)~~) neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection(~~(, notwithstanding the provisions of RCW 76.04.630, at a cost to the owner of not to exceed twenty two cents an acre per year for assessments levied after December 31, 1989: PROVIDED, That there shall be no assessment on any parcel of privately owned lands of less than two acres))~~) and shall annually impose the following assessments on each parcel of such land: (a) A flat fee assessment of fourteen dollars and fifty cents; and (b) twenty-two cents on each acre exceeding fifty acres. Assessors may, at their option, collect the assessment on ~~((any))~~ tax exempt lands ~~((less than ten acres))~~. If the assessor elects not to collect the assessment, the department may bill the landowner directly. ~~((The minimum assessment for any ownership parcel subject to the assessment shall be ten dollars for assessments levied in collection year 1990 and fourteen dollars for each year thereafter.))~~

(2) An owner ~~((of two or more parcels per county, each containing less than fifty acres, may obtain a refund of the assessments paid on all such parcels over one by applying therefor within the year the assessment was due to the department, in such form as the department may require. Verification that all assessments and property taxes on the property have been paid shall be provided to the department by the owner. If the total acreage of the parcels exceeds fifty acres, the per acre rate shall apply and the refund shall be computed accordingly. Application for the refund may be made by mail))~~ who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) fourteen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) fourteen dollars, (ii) twenty-two cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

(4) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. ~~((Any))~~ Amounts paid or contracted to be paid by the department for protection of forest lands from ~~((any))~~ funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to ~~((any))~~ a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of ~~((such))~~ assessments the county treasurer shall ~~((transmit them))~~ place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend ~~((any))~~ sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall ~~((forthwith))~~ immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from ~~((any))~~ available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments shall not be a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and shall be subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it, shall be liable for the costs of suppression incurred by the department or its agent and shall not be entitled to reimbursement of ~~((any))~~ costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments.

**Sec. 2.** RCW 76.04.630 and 1991 sp.s. c 13 s 31 are each amended to read as follows:

There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account ~~((such))~~ the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from ~~((such))~~ the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account ~~((any))~~ moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed ~~((by a special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department, but not to exceed fifteen cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a minimum assessment for ownership parcels identified in RCW 76.04.610 as paying the minimum assessment. The maximum assessment for these parcels shall not exceed the fees levied on a thirty acre parcel. There shall be no assessment on each parcel of privately owned lands of less than two acres))~~ by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or ~~((any))~~ an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and ~~((any))~~ an appeal shall be in accordance with RCW 34.05.510 through 34.05.598.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.



Passed the House March 13, 1993.  
 Passed the Senate April 12, 1993.  
 Approved by the Governor April 15, 1993.  
 Filed in Office of Secretary of State April 15, 1993.

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**CHAPTER 37**

[Substitute Senate Bill 5313]

**RECORDING OF DOCUMENTS SURCHARGE—REVISED**

**Effective Date:** 7/25/93

AN ACT Relating to surcharges for recording documents; and amending RCW 36.22.170.  
 Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 36.22.170 and 1989 c 204 s 3 are each amended to read as follows:

A surcharge of two dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. Fifty percent of the revenue generated through this surcharge shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in RCW 36.22.190. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for ((the purpose authorized by this chapter)) ongoing preservation of historical documents of all county offices and departments and shall not be added to the county current expense fund. Fifty percent of the revenue generated by this surcharge shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents of all county offices and departments. ~~((The portion of the surcharge transmitted to the state treasurer shall expire January 1, 1995, at which time the surcharge authorized in this section shall be reduced to one dollar per instrument.))~~

The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation.

Passed the Senate February 23, 1993.  
 Passed the House April 7, 1993.  
 Approved by the Governor April 19, 1993.  
 Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 38**

[Substitute Senate Bill 5596]

**STATE TREASURY WARRANTS—RETENTION PERIOD REVISED**

**Effective Date: 7/25/93**

AN ACT Relating to warrants redeemed by the state treasurer; and amending RCW 43.08.061. Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 43.08.061 and 1981 c 10 s 1 are each amended to read as follows:

The public printer shall print all state treasury warrants for distribution as directed by the state treasurer. All warrants redeemed by the state treasurer shall be retained for a period of ~~((two years))~~ one year, following their redemption, after which they may be destroyed without regard to the requirements imposed for their destruction by chapter 40.14 RCW.

Passed the Senate March 17, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

**CHAPTER 39**

[Substitute Senate Bill 5821]

**PUBLIC WORKS—CAPITAL FACILITIES PLANS  
AND EMERGENCY LOAN LIMITS**

**Effective Date: 7/1/93**

AN ACT Relating to the public works board; amending RCW 43.155.070; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 43.155.070 and 1991 sp.s. c 32 s 23 are each amended to read as follows:

(1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a long-term plan for financing public works needs;

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors; and

(d) A county, city, or town that is required or chooses to plan under RCW 36.70A.040 must have adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, and must have adopted development regulations in conformance

with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted.

(2) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(f) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(g) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(h) Other criteria that the board considers advisable.

(3) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(4) Before November 1 of each year, the board shall develop and submit to the chairs of the ways and means committees of the senate and house of representatives a description of the emergency loans made under RCW 43.155.065 during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits

and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(5) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(6) Subsections (4) and (5) of this section do not apply to loans made for emergency public works projects under RCW 43.155.065.

(7)(a) Loans made for the purpose of capital facilities plans shall be exempted from subsections (4) and (5) of this section. In no case shall the total amount of funds utilized for capital facilities plans and emergency loans exceed the limitation in RCW 43.155.065.

(b) For the purposes of this section "capital facilities plans" means those plans required by the growth management act, chapter 36.70A RCW, and plans required by the public works board for local governments not subject to the growth management act.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 15, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 40

[Substitute Senate Bill 5262]

BEEF COMMISSION MEMBERSHIP REVISED

Effective Date: 6/1/93

AN ACT Relating to the beef commission; amending RCW 16.67.040, 16.67.050, and 16.67.060; adding a new section to chapter 16.67 RCW; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 16.67.040 and 1991 c 9 s 1 are each amended to read as follows:

There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of ~~((three))~~ one beef producer~~((s))~~, ~~((two))~~ one dairy (beef) producer~~((s))~~, ~~((three))~~ one feeder~~((s))~~, one livestock salesyard operator, and one meat packer. In addition there will be one ex officio member without the right to vote from the department of agriculture to be designated by the director thereof.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he or she represents for a period of five years, and has during that period derived a substantial portion of his or her income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office.

**Sec. 2.** RCW 16.67.050 and 1991 c 9 s 2 are each amended to read as follows:

The appointive positions on the commission shall be designated as follows: The three beef producers shall be designated positions one, two and three; one dairy (beef) producer shall be designated position four and one, position ten; the three feeders shall be designated positions five, six and seven; the livestock salesyard operator shall be designated position eight; the meat packer shall be designated position nine.

The regular term of office shall be three years from the date of appointment and until their successors are appointed. However, the first term of office for position ten shall terminate July 1, 1994, and the first terms of the members whose terms began on July 1, 1969 shall be as follows: Positions one, four and seven shall terminate July 1, 1970; positions two, five and eight shall terminate July 1, 1971; positions three, six and nine shall terminate July 1, 1972.

This section shall expire on June 30, 1993.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 16.67 RCW to read as follows:

Commencing on July 1, 1993, the appointive positions on the commission shall be designated as follows: The beef producer shall be designated position one; the dairy (beef) producer shall be designated position two; the feeder shall be designated position three; the livestock salesyard operator shall be designated position four; and the meat packer shall be designated position five.

The initial terms of positions one and four shall terminate July 1, 1994; positions two and five shall terminate July 1, 1995; and position three shall terminate July 1, 1996. The regular term of office of subsequent appointees shall be three years from the date of appointment and until their successors are appointed.

**Sec. 4.** RCW 16.67.060 and 1991 c 9 s 3 are each amended to read as follows:

The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made to him or her by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission.

Commencing on June 1, 1993, and by June 1 of each subsequent year, organizations under this section shall make a recommendation as required, to the director of a person to serve on the commission.

**NEW SECTION. Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993.

Passed the Senate March 8, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 41

[Engrossed Senate Bill 5205]

### CHILD MORTALITY REVIEW

Effective Date: 7/25/93

AN ACT Relating to infant mortality review; and amending RCW 70.05.170.

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

**Sec. 1.** RCW 70.05.170 and 1992 c 179 s 1 are each amended to read as follows:

(1)(a) The legislature finds that the ~~((rate of infant))~~ mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of ~~((infant))~~ child mortality reviews, preventable causes of ~~((infant))~~ child mortality can be identified and addressed, thereby reducing the ~~((rate of))~~ infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of ~~((infant))~~ child death reviews by local health departments by providing necessary legal protections to the families of ~~((infants))~~ children whose deaths are studied, local health department officials and employees, and health care professionals participating in ~~((infant))~~ child mortality review committee activities.

(2) As used in this section, "~~((infant))~~ child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to ~~((infant death through))~~ deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of ~~((infants))~~ children who have died; analysis of

individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct ~~((infant))~~ child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of ~~((an infant))~~ a child mortality review are confidential insofar as the identity of an individual ~~((infant))~~ child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the review. This section does not prevent a local health department from publishing statistical compilations and reports related to the ~~((infant))~~ child mortality review, if such compilations and reports do not identify individual cases and sources of information.

(b) Any records or documents supplied or maintained for the purposes of ~~((an infant))~~ a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of ~~((an infant))~~ a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.

(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of ~~((an infant))~~ a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of ~~((an infant))~~ a child reviewed.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected ~~((infant))~~ child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of ~~((an infant))~~ a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

Passed the Senate February 17, 1993.  
 Passed the House April 8, 1993.  
 Approved by the Governor April 19, 1993.  
 Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 42

[Substitute Senate Bill 5386]

### HOME HEALTH, HOSPICE, AND HOME CARE AGENCY LICENSURE

**Effective Date:** 6/30/93 - Except Section 11 which becomes effective on 1/1/94

AN ACT Relating to the licensure of home health, hospice, and home care agencies under chapter 70.127 RCW; amending RCW 70.127.010, 70.127.040, 70.127.050, 70.127.080, 70.127.090, 70.127.100, 70.127.120, 70.127.130, and 70.127.250; adding new sections to chapter 70.127 RCW; creating a new section; repealing RCW 70.127.160, 70.127.900, and 70.127.901; providing effective dates; and declaring an emergency.

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

**Sec. 1.** RCW 70.127.010 and 1991 c 3 s 373 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Branch office" means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision, and services.

(2) "Department" means the department of health.

(3) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(4) "Home care services" means personal care services, homemaker services, respite care services, or any other nonmedical services provided to ill, disabled, or infirm persons which services enable these persons to remain in their own residences consistent with their desires, abilities, and safety.

(5) "Home health agency" means a private or public agency or organization that administers or provides home health aide services or two or more home health services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence. A private or public agency or organization that administers or provides nursing services only may elect to be designated a home health agency for purposes of licensure.

(6) "Home health services" means health or medical services provided to ill, disabled, or infirm persons. These services may be of an acute or maintenance care nature, and include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy



services, respiratory therapy services, nutritional services, medical social services, and medical supplies or equipment services.

(7) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services (~~needed to achieve medically desired results~~).

(8) "Homemaker services" means services that assist ill, disabled, or infirm persons with household tasks essential to achieving adequate household and family management.

(9) "Hospice agency" means a private or public agency or organization administering or providing hospice care directly or through a contract arrangement to terminally ill persons in places of temporary or permanent residence by using an interdisciplinary team composed of at least nursing, social work, physician, and pastoral or spiritual counseling.

(10) "Hospice care" means: (a) Palliative care provided to a terminally ill person in a place of temporary or permanent residence that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care may include health and medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

(11) "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

(12) "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

(13) "Public or private agency or organization" means an entity that employs or contracts with two or more persons who provide care in the home.

(14) "Respite care services" means services that assist or support the primary care giver on a scheduled basis.

**Sec. 2.** RCW 70.127.040 and 1988 c 245 s 5 are each amended to read as follows:

The following are not subject to regulation for the purposes of this chapter:

- (1) A family member;
- (2) An organization that provides only meal services in a person's residence;
- (3) Entities furnishing durable medical equipment that does not involve the delivery of professional services beyond those necessary to set up and monitor the proper functioning of the equipment and educate the user on its proper use;

(4) A person who provides services through a contract with a licensed agency;

(5) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(6) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71.12 RCW, or other facilities and institutions, only when providing services to persons residing within the facility or institution if the delivery of the services is regulated by the state;

(7) Persons providing care to disabled persons through a contract with the department of social and health services;

(8) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(9) In-home assessments of an ill, disabled, or infirm person's ability to adapt to the home environment that does not result in regular ongoing care at home;

(10) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(11) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(12) Case management services which do not include the direct delivery of home health, hospice, or home care services;

(13) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use.

**Sec. 3.** RCW 70.127.050 and 1988 c 245 s 6 are each amended to read as follows:

~~(Notwithstanding RCW 70.127.020(2) and 70.127.030(2), a volunteer organization that provides hospice care without receiving compensation for delivery of services that does not meet the licensure requirements of this chapter for a hospice agency may use the phrase "volunteer hospice" if the volunteer organization was formed prior to January 1, 1988, and the organization notifies the department prior to July 1, 1989. This section shall not be considered an exemption from the home health agency or home care agency license provisions of this chapter.)~~ (1) An entity that provides hospice care without receiving compensation for delivery of any of its services is exempt from licensure pursuant to RCW 70.127.020(2) if it notifies the department, on forms provided by the department, of its name, address, name of owner, and a statement

affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department within sixty days after the effective date of this section, or within sixty days after being informed in writing by the department of this requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d) and (e).

**Sec. 4.** RCW 70.127.080 and 1988 c 245 s 9 are each amended to read as follows:

(1) An applicant for a home health, hospice, or home care agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site review conducted by the department prior to licensure or renewal except as provided in section 11 of this act;

(d) Provide evidence of and maintain professional liability insurance in the amount of one hundred thousand dollars per occurrence or adequate self-insurance as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide evidence of and maintain public liability and property damage insurance coverage in the sum of fifty thousand dollars for injury or damage to property per occurrence and fifty thousand dollars for injury or damage, including death, to any one person and one hundred thousand dollars for injury or damage, including death, to more than one person, or evidence of adequate self-insurance for public liability and property damage as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(f) Provide such proof as the department may require concerning organizational (~~and governance~~) structure, and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(g) File with the department a list of the counties in which the applicant will operate;

(h) File with the department a list of the services offered;

(i) Pay to the department a license fee as provided in RCW 70.127.090; and  
 (j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure.

(3) A license or renewal shall not be granted pursuant to this chapter if the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets, within the last five years have been found in a civil or criminal proceeding to have committed any act which reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another.

(4) A separate license is not required for a branch office.

**Sec. 5.** RCW 70.127.090 and 1988 c 245 s 10 are each amended to read as follows:

An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW ~~((43.20B.110))~~ 43.70.250. ~~((A surcharge no greater than fifty dollars per year may be assessed for the period of time necessary to repay the cost of implementing this chapter.))~~ Licensure fees shall be based on a sliding scale using the number of agency full-time equivalents, with agencies with the highest number of full-time equivalents paying the highest fee. Full-time equivalent is a measurement based on a forty-hour work week and is applicable to paid agency employees or contractors. For agencies receiving a licensure survey that requires more than one on-site review by the department per licensure period, an additional fee of fifty percent of the base licensure fee shall be charged for each additional on-site review. The department shall charge a reasonable fee for processing changes in ownership. The department may set different licensure fees for each licensure category.

**Sec. 6.** RCW 70.127.100 and 1988 c 245 s 11 are each amended to read as follows:

Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. ~~((All persons operating as home health, hospice, or home care agencies before July 1, 1989, shall submit their applications and application fees by July 1, 1989. In addition, issuance of a license is conditioned on the department conducting an on-site review.))~~ A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, ((may be effective for a period of up to two years, at the discretion of the department)) is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct an on-site review within each licensure period. The department may conduct a licensure survey after ownership transfer. The fee for this survey may not exceed fifty percent of the base licensure fee. The

department may establish penalty fees for failure to apply for licensure or renewal as required by this chapter.

**NEW SECTION. Sec. 7.** The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of license and consistent with legislative intent.

**Sec. 8.** RCW 70.127.120 and 1988 c 245 s 13 are each amended to read as follows:

The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of persons by licensees;

(2) Establishment of a procedure for the receipt, investigation, and disposition of complaints by the department regarding services provided by licensees;

(3) Establishment and implementation of a plan for on-going care of persons and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Maintenance of written policies regarding response to referrals and access to services at all times;

(6) Maintenance of written personnel policies and procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality assurance activities. The department may not establish ~~((qualifications for licensed professionals other than those required for licensure))~~ experience or other qualifications for agency personnel or contractors beyond that required by state law; ((and))

(7) Maintenance of written policies and procedures for volunteers that have direct patient contact and that provide for background and health screening, orientation, and supervision; and

(8) Maintenance of written policies on obtaining regular reports on patient satisfaction.

**Sec. 9.** RCW 70.127.130 and 1988 c 245 s 14 are each amended to read as follows:

Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with board of pharmacy rules.

**Sec. 10.** RCW 70.127.250 and 1988 c 245 s 25 are each amended to read as follows:

(1) In addition to the rules consistent with RCW 70.127.005 adopted under RCW 70.127.120, the department shall adopt rules for home health agencies which address the following:

(a) Establishment of case management guidelines for acute and maintenance care patients;

(b) Establishment of guidelines for periodic review of the home health care plan of care and plan of treatment by appropriate health care professionals; and

(c) Maintenance of written policies regarding the delivery and supervision of patient care and clinical consultation as necessary by appropriate health care professionals.

(2) As used in this section:

(a) "Acute care" means care provided by a home health agency for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional in order to maintain their health status.

(b) "Maintenance care" means care provided by home health agencies that is necessary to support an existing level of health and to preserve a patient from further failure or decline.

(c) "Home health plan of care" means a written plan of care established by a home health agency by appropriate health care professionals that describes maintenance care to be provided. A patient or his or her representative shall be allowed to participate in the development of the plan of care to the ~~((extend {extent}))~~ extent practicable.

(d) "Home health plan of treatment" means a written plan of care established by a physician licensed under chapter 18.57 or 18.71 RCW, a ~~((podiatrist))~~ podiatric physician and surgeon licensed under chapter 18.22 RCW, or an advanced registered nurse practitioner as authorized by the board of nursing under chapter 18.88 RCW, in consultation with appropriate health care professionals within the agency that describes medically necessary acute care to be provided for treatment of illness or injury.

NEW SECTION. **Sec. 11.** (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), a home health or hospice agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency shall be granted the applicable renewal license, without necessity of a state licensure on-site survey if:

(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports

and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), a home care agency under contract with the department of social and health services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging shall be granted a renewal license, without necessity of an on-site survey by the department of health if:

(a) The department determines that the department of social and health services or area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or area agency on aging during the previous twenty-four months;

(c) The department of social and health services or area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation concerning the risk to the consumer. The determination of substantial equivalency for alternative survey process and lack of substantial equivalency are agency actions and subject to RCW 34.05.210 through 34.05.395 and 34.05.510 through 34.05.680.

(4) Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category. It is the intent of this section that the licensure fees for all agencies will be lowered by the elimination of the duplication that currently exists.

(5) In order to avoid unnecessary costs, the department is not authorized to perform a validation survey if it is also the agency performing the certification or accreditation survey. Where this is not the case, the department is authorized to perform a validation survey on no greater than five percent of each type of certification or accreditation survey.

(6) This section does not affect the department's enforcement authority for licensed agencies.

NEW SECTION. **Sec. 12.** The following acts or parts of acts are each repealed:

- (1) RCW 70.127.160 and 1988 c 245 s 17;
- (2) RCW 70.127.900 and 1988 c 245 s 37; and
- (3) RCW 70.127.901 and 1988 c 245 s 38.

NEW SECTION. **Sec. 13.** Sections 7 and 11 of this act are each added to chapter 70.127 RCW.

NEW SECTION. **Sec. 14.** 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. 15.** (1) Sections 1 through 10 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993.

(2) Section 11 of this act shall take effect January 1, 1994.

Passed the Senate February 24, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 43**

[Substitute Senate Bill 5026]

**CREMATION OF HUMAN REMAINS—IMMUNITY FROM LIABILITY FOR**

**Effective Date: 7/25/93**

AN ACT Relating to regulation of funeral directors, embalmers, and crematories; amending RCW 18.39.290, 68.05.100, 68.05.205, and 68.50.180; and adding a new section to chapter 18.39 RCW.

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

**Sec. 1.** RCW 18.39.290 and 1986 c 259 s 69 are each amended to read as follows:

All certificates of registration issued pursuant to this chapter shall continue in force until the expiration date unless suspended or revoked. A certificate shall be subject to renewal annually ninety days after the end of its fiscal year, as stated on the original application, by the funeral establishment and payment of the required fees.

The director shall determine and collect fees related to certificate of registration licensure.

All fees so collected shall be remitted by the director to the state treasurer not later than the first business day following receipt of such funds and the funds shall be credited to the (~~health professions~~) funeral directors and embalmers account.



**NEW SECTION.** Sec. 2. A new section is added to chapter 18.39 RCW to read as follows:

The funeral directors and embalmers account is created in the custody of the state treasurer. All fees received by the department for licenses, registrations, renewals, examinations, and audits shall be forwarded to the state treasurer who shall credit the money to the account. All fines and civil penalties ordered by the superior court or fines ordered pursuant to RCW 18.130.160(8) against holders of licenses or registrations issued under the provisions of this chapter shall be paid to the account. All expenses incurred in carrying out the licensing and registration activities of the department and the state funeral directors and embalmers board under this chapter shall be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. All earnings of investments of balances in the account shall be credited to the general fund. Any fund balance remaining in the health professions account attributable to the funeral director and embalmer professions as of the effective date of this act shall be transferred to the funeral directors and embalmers account.

Sec. 3. RCW 68.05.100 and 1987 c 331 s 9 are each amended to read as follows:

The board may establish necessary rules and regulations for the enforcement of this title and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this title. Rules regulating the cremation of human remains and establishing ~~((fees and))~~ permit requirements shall be adopted in consultation with the state board of funeral directors and embalmers.

Sec. 4. RCW 68.05.205 and 1987 c 331 s 16 are each amended to read as follows:

~~((Every cemetery authority shall pay for each cemetery operated by it, an annual regulatory charge to be fixed by the director of not more than three dollars per interment, entombment, and inurnment made during the preceding full calendar year, which charges shall be deposited in the cemetery account. Upon payment of said charges and compliance with the provisions of Title 68 RCW and the lawful orders, rules, and regulations of the board, the board will issue a certificate of authority.))~~ The director with the consent of the cemetery board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees.

Sec. 5. RCW 68.50.180 and 1979 c 21 s 14 are each amended to read as follows:

The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery

authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

In the event the state of Washington or any of its agencies provide the funds for the disposition of any remains and the state or its agency elects to provide the funds for cremation only, the cemetery authority or licensed funeral establishment shall not be criminally or civilly liable for cremating the remains.

If a cemetery authority with a permit issued under RCW 68.05.175 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the persons cited in RCW 68.50.160 or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to cremate executed by the most responsible party available, and the cemetery authority or funeral establishment shall not be criminally or civilly liable for cremating the remains.

Passed the Senate February 9, 1993.

Passed the House March 19, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 44

[Senate Bill 5077]

### SURVIVAL OF ACTIONS AND RECOVERY OF DAMAGES—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to survival of actions and damages; and amending RCW 4.20.046.

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

**Sec. 1.** RCW 4.20.046 and 1961 c 137 s 1 are each amended to read as follows:

(1) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section: PROVIDED, HOWEVER, That ((æ)) the personal representative shall only be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased on behalf of those beneficiaries enumerated in RCW 4.20.020, and such damages are recoverable regardless of whether or not the death was occasioned by the injury that is the basis for the action. The liability of property of a husband and wife held by them as community property to execution in satisfaction of a claim enforceable against such property so held shall not be affected by the death of either or both spouses; and a cause of action shall remain an asset as though both claiming spouses continued to live despite the death of either or both claiming spouses.

(2) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person.

Passed the Senate March 15, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 45

[Engrossed Substitute Senate Bill 5110]

### WATER AND SEWER DISTRICTS—REVISED BILLING AND BIDDING PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to water and sewer districts; amending RCW 56.08.070 and 57.08.050; adding a new chapter to Title 56 RCW; and adding a new chapter to Title 57 RCW.

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

**NEW SECTION.** Sec. 1. A sewer district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their sewer district bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their sewer district bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified.

**NEW SECTION.** Sec. 2. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the sewer district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the sewer district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community development within the district's service area. The grantee or charitable organization shall provide

the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance.

**NEW SECTION.** **Sec. 3.** Contributions received under a program implemented by a sewer district in compliance with this chapter shall not be considered a commingling of funds.

**Sec. 4.** RCW 56.08.070 and 1989 c 105 s 1 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of sewer commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. The board of sewer commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any competitive contract the board of sewer commissioners shall cause a notice to be published in a newspaper in general circulation where the district is located at least once, ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of sewer commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of sewer commissioners on or before the day and hour named therein.

(2) Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named such bids shall be publicly opened and read and the board of sewer commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications: PROVIDED, That no contract shall be let in excess of the

cost of ~~((said))~~ the materials or work ~~((, or if in the opinion of))~~. The board of sewer commissioners ~~((all bids are unsatisfactory they))~~ may reject all ~~((of them))~~ bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of sewer commissioners in the full amount of the contract price between the bidder and the commission in accordance with bid. If ~~((said))~~ the bidder fails to enter into ~~((said))~~ the contract in accordance with ~~((said))~~ the bid and furnish such bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the ~~((said))~~ check, cash or bid bonds and the amount thereof shall be forfeited to the sewer district.

(3) In the event of an emergency when the public interest or property of the sewer district would suffer material injury or damage by delay, upon resolution of the board of sewer commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.

NEW SECTION. Sec. 5. A water district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their water district bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their water district bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified.

NEW SECTION. Sec. 6. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the water district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the water district. The availability of funds for assistance to a district's low-income customers as a result of voluntary

contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance.

**NEW SECTION. Sec. 7.** Contributions received under a program implemented by a water district in compliance with this chapter shall not be considered a commingling of funds.

**Sec. 8.** RCW 57.08.050 and 1989 c 105 s 2 are each amended to read as follows:

(1) The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide.

(2) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of water commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. The board of water commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any such contract the board of water commissioners shall cause a notice to be published in a newspaper in general circulation where the district is located at least once ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein.

(3) Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than

five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless ~~((he))~~ the bidder enters into a contract in accordance with his or her bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his or her own plans and specifications: PROVIDED, That no contract shall be let in excess of the cost of ~~((said))~~ the materials or work ~~((, or if in the opinion of))~~. The board of water commissioners ~~((all bids are unsatisfactory they))~~ may reject all ~~((of them))~~ bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If ~~((said))~~ the bidder fails to enter into ~~((said))~~ the contract in accordance with ~~((said))~~ the bid and furnish such bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the ~~((said))~~ check, cash or bid bonds and the amount thereof shall be forfeited to the water district: PROVIDED, That if the bidder fails to enter into a contract in accordance with ~~((his))~~ the bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required herein, then the water district shall be entitled to collect from ~~((said))~~ the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby.

(4) In the event of an emergency when the public interest or property of the water district would suffer material injury or damage by delay, upon resolution of the board of water commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.

NEW SECTION. Sec. 9. (1) Sections 1 through 3 of this act shall constitute a new chapter in Title 56 RCW.

(2) Sections 5 through 7 of this act shall constitute a new chapter in Title 57 RCW.

Passed the Senate March 9, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

**CHAPTER 46**

[Substitute Senate Bill 5896]

**PUBLIC RESTROOM FUNDING AUTHORITY**

**Effective Date:** 7/25/93

AN ACT Relating to public restroom facilities; and amending RCW 67.28.210.

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

**Sec. 1.** RCW 67.28.210 and 1992 c 202 s 1 are each amended to read as follows:

All taxes levied and collected under RCW 67.28.180, 67.28.240, and 67.28.260 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. In addition such taxes may be used to develop strategies to expand tourism: **PROVIDED**, That any county, and any city within a county, bordering upon Grays Harbor may use the proceeds of such taxes for construction and maintenance of a movable tall ships tourist attraction in cooperation with a tall ships restoration society, except to the extent that such proceeds are used for payment of principal and interest on debt incurred prior to June 11, 1986: **PROVIDED FURTHER**, That any city or county may use the proceeds of such taxes for the refurbishing and operation of a steam railway for tourism promotion purposes: **PROVIDED FURTHER**, That any city bordering on the Pacific Ocean with a population of not less than one thousand and the county in which such a city is located may use the proceeds of such taxes for funding special events or festivals, or promotional infrastructures including but not limited to an ocean beach boardwalk: **PROVIDED FURTHER**, That any county which imposes a tax under RCW 67.28.182 may use the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities available to and intended for use by visitors.



Passed the Senate March 16, 1993.  
 Passed the House April 8, 1993.  
 Approved by the Governor April 19, 1993.  
 Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 47**

[Senate Bill 5112]

**CITIES AND TOWNS—REVISED HIRING PROCEDURES FOR**

**Effective Date: 7/25/93**

AN ACT Relating to hiring procedures by cities and towns; and amending RCW 35.24.020, 35.27.070, 35.27.130, 41.08.040, and 41.12.040.

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

**Sec. 1.** RCW 35.24.020 and 1987 c 3 s 9 are each amended to read as follows:

The government of a third class city shall be vested in a mayor, a city council of seven members, a city attorney, a clerk, a treasurer, all elective; and a chief of police, municipal judge, city engineer, street superintendent, health officer and such other appointive officers as may be provided for by statute or ordinance: PROVIDED, That the council may enact an ordinance providing for the appointment of the city clerk, city attorney, and treasurer by the mayor, which appointment shall be subject to confirmation by a majority vote of the city council. Such ordinance shall be enacted and become effective not later than thirty days prior to the first day allowed for filing declarations of candidacy for such offices when such offices are subject to an approaching city primary election. Elective incumbent city clerks, city attorneys, and city treasurers shall serve for the remainder of their unexpired term notwithstanding any appointment made pursuant to RCW 35.24.020 and 35.24.050. If a free public library and reading room is established, five library trustees shall be appointed. The city council by ordinance shall prescribe the duties and fix the compensation of all officers and employees: PROVIDED, That the provisions of any such ordinance shall not be inconsistent with any statute: PROVIDED FURTHER, That where the city council finds that the appointment of a full time city engineer is unnecessary, it may in lieu of such appointment, by resolution provide for the performance of necessary engineering services on either a part time, temporary or periodic basis by a qualified engineering firm, pursuant to any reasonable contract.

The mayor shall appoint and at his or her pleasure may remove all appointive officers except as otherwise provided herein: PROVIDED, That municipal judges shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering ((him)) the judge incapable of performing the duties of his or her office. Every

appointment or removal must be in writing signed by the mayor and filed with the city clerk.

**Sec. 2.** RCW 35.27.070 and 1987 c 3 s 12 are each amended to read as follows:

The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; the mayor shall appoint a clerk and a marshal; and may appoint a town attorney, pound master, street superintendent, a civil engineer, and such police and other subordinate officers and employees as may be provided for by ordinance. All appointive officers and employees shall hold office at the pleasure of the mayor and shall not be subject to confirmation by the town council.

**Sec. 3.** RCW 35.27.130 and 1990 c 212 s 2 are each amended to read as follows:

The mayor and members of the town council may be reimbursed for actual expenses incurred in the discharge of their official duties upon presentation of a claim therefor and its allowance and approval by resolution of the town council. The mayor and members of the council may also receive such salary as the council may fix by ordinance.

The treasurer and treasurer-clerk shall severally receive at stated times a compensation to be fixed by ordinance.

The compensation of all other officers and employees shall be fixed from time to time by the council.

Any town that provides a pension for any of its employees under a plan not administered by the state must notify the state auditor of the existence of the plan at the time of an audit of the town by the auditor. No town may establish a pension plan for its employees that is not administered by the state, except that any defined contribution plan in existence as of January 1, 1990, is deemed to have been authorized. No town that provides a defined contribution plan for its employees as authorized by this section may make any material changes in the terms or conditions of the plan after June 7, 1990.

**Sec. 4.** RCW 41.08.040 and 1973 1st ex.s. c 154 s 60 are each amended to read as follows:

Immediately after appointment the commission shall organize by electing one of its members (~~(chairman)~~) chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town or municipality, or promotional

and limited to persons already in the service of the fire department or of the fire department and other departments of said city, town or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction or discharge in the same manner and subject to the same limitations as are provided in the case of members of the fire department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill.

(3) The rules and regulations adopted by the commission shall provide for a credit ~~((of ten percent))~~ in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only.

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents and accounts appertaining to the investigation and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions

in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(5) All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission.

(7) Establish and maintain in card or other suitable form a roster of officers and employees.

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year.

(10) Keep such records as may be necessary for the proper administration of this chapter.

**Sec. 5.** RCW 41.12.040 and 1937 c 13 s 5 are each amended to read as follows:

Immediately after appointment the commission shall organize by electing one of its members (~~(chairman)~~) chair and hold regular meetings at least once a

month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town, or municipality, or promotional and limited to persons already in the service of the police department or of the police department and other departments of ~~((said))~~ the city, town, or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the police department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time;

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill;

(3) The rules and regulations adopted by the commission shall provide for a credit ~~((of ten percent))~~ in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only;

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must

these investigations be made by the commission (~~(as aforesaid)~~), but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such;

(5) Hearings and Investigations: How conducted. All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members;

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission;

(7) Establish and maintain in card or other suitable form a roster of officers and employees;

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that ~~((men))~~ persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed;

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive

more than one provisional appointment or serve more than four months as provisional appointee in any one fiscal year;

(10) Keep such records as may be necessary for the proper administration of this chapter.

Passed the Senate February 17, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 48

[Senate Bill 5233]

### COSTS ALLOWED TO PREVAILING PARTY—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to costs allowed to a prevailing party; and amending RCW 4.84.010.

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

**Sec. 1.** RCW 4.84.010 and 1984 c 258 s 92 are each amended to read as follows:

The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

(1) Filing fees;

(2) Fees for the service of process by a public officer, registered process server, or other means, as follows:

(a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount reasonably incurred in effecting service;

(3) Fees for service by publication;

(4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;

(5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;

(6) Statutory attorney and witness fees; and

(7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.

Passed the Senate March 4, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 49**

[Substitute Senate Bill 5255]

**ESCHEAT LANDS SUITABLE FOR PARK AND RECREATION USE**

**Effective Date: 7/25/93**

AN ACT Relating to escheat lands suitable for operation for park and recreation purposes; and amending RCW 79.01.612, 11.08.250, and 11.08.260.

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

**Sec. 1.** RCW 79.01.612 and 1984 c 222 s 13 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department of natural resources shall manage and control all lands acquired by the state by escheat or under chapter 79.66 RCW and all lands acquired by the state by deed of sale or gift or by devise, except such lands which are conveyed or devised to the state to be used for a particular purpose. The department shall lease the lands in the same manner as school lands. When the department determines to sell the lands, they shall be initially offered for sale either at public auction or direct sale to public agencies as provided in this chapter. If the lands are not sold at public auction, the department may, with approval of the board of natural resources, market the lands through persons licensed under chapter 18.85 RCW or through other commercially feasible means at a price not lower than the land's appraised value and pay necessary marketing costs from the sale proceeds. Necessary marketing costs includes reasonable costs associated with advertising the property and paying commissions. The proceeds of the lease or sale of all such lands shall be deposited into the appropriate fund in the state treasury in the manner prescribed by law(~~(= PROVIDED, That)), except~~ if the grantor in any such deed or the testator in case of a devise specifies that the proceeds of the sale or lease of such lands be devoted to a particular purpose such proceeds shall be so applied. The department may employ agents to rent any escheated, deeded, or devised lands, or lands acquired under chapter 79.66 RCW, for such rental and time and in such manner as the department directs, but the property



shall not be rented by such agent for a longer period than one year and no tenant is entitled to compensation for any improvement which he makes on such property. The agent shall cause repairs to be made to the property as the department directs, and shall deduct the cost thereof, together with such compensation and commission as the department authorizes, from the rentals of such property and the remainder which is collected shall be transmitted monthly to the department of natural resources.

(2) When land is acquired by the state by escheat which because of its location or features may be suitable for park purposes, the department shall notify the state parks and recreation commission. The department and the commission shall jointly evaluate the land for its suitability for park purposes, based upon the features of the land and the need for park facilities in the vicinity. Where the department and commission determine that such land is suitable for park purposes, it shall be offered for transfer to the commission, or, in the event that the commission declines to accept the land, to the local jurisdiction providing park facilities in that area. When so offered, the payment required by the recipient agency shall not exceed the costs incurred by the department in managing and protecting the land since receipt by the state.

(3) The department may review lands acquired by escheat since January 1, 1983, for their suitability for park purposes, and apply the evaluation and transfer procedures authorized by subsection (2) of this section.

Sec. 2. RCW 11.08.250 and 1965 c 145 s 11.08.250 are each amended to read as follows:

Upon establishment of the claim to the satisfaction of the court, it shall order payment to the claimant of any escheated funds and delivery of any escheated land, or the proceeds thereof, if sold. If, however, the escheated property shall have been transferred to the state parks and recreation commission or local jurisdiction for park purposes, the court shall order payment to the claimant for the fair market value of the property at the time of transfer, excluding the value of physical improvements to the property while managed by a state agency or local jurisdiction. The value shall be established by independent appraisal obtained by the department of revenue.

Sec. 3. RCW 11.08.260 and 1975 1st ex.s. c 278 s 9 are each amended to read as follows:

In the event the order of the court requires the payment of escheated funds or the proceeds of the sale of escheated real property or the appraised value of escheated property transferred for park purposes, a certified copy of such order shall be served upon the department of revenue which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state.

Passed the Senate March 9, 1993.  
Passed the House April 8, 1993.  
Approved by the Governor April 19, 1993.  
Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 50**

[Senate Bill 5358]

**REAL ESTATE EDUCATION ACCOUNT CREATED**

**Effective Date: 7/1/93**

AN ACT Relating to the creation of an appropriated real estate education account; amending RCW 18.85.220, 18.85.310, and 18.85.315; adding a new section to chapter 18.85 RCW; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 18.85.220 and 1991 c 277 s 1 are each amended to read as follows:

All fees required under this chapter shall be set by the director in accordance with RCW 43.24.086 and shall be paid to the state treasurer. All fees paid under the provisions of this chapter shall be placed in the real estate commission account in the state treasury. All money derived from fines imposed under this chapter shall ~~((also)) be deposited in the real estate ((commission account, shall be used solely for education for the benefit of licensees and shall be subject to appropriation pursuant to chapter 43.88 RCW))~~ education account created by section 4 of this act.

**Sec. 2.** RCW 18.85.310 and 1988 c 286 s 2 are each amended to read as follows:

(1) Every licensed real estate broker shall keep adequate records of all real estate transactions handled by or through him. The records shall include, but are not limited to, a copy of the earnest money receipt, and an itemization of the broker's receipts and disbursements with each transaction. These records and all other records hereinafter specified shall be open to inspection by the director or his authorized representatives.

(2) Every real estate broker shall also deliver or cause to be delivered to all parties signing the same, at the time of signing, conformed copies of all earnest money receipts, listing agreements and all other like or similar instruments signed by the parties, including the closing statement.

(3) Every real estate broker shall also keep separate real estate fund accounts in a recognized Washington state depository authorized to receive funds in which shall be kept separate and apart and physically segregated from licensee broker's own funds, all funds or moneys of clients which are being held by such licensee broker pending the closing of a real estate sale or transaction, or which have been collected for said client and are being held for disbursement for or to said

client and such funds shall be deposited not later than the first banking day following receipt thereof.

(4) Separate accounts comprised of clients' funds required to be maintained under this section, with the exception of property management trust accounts, shall be interest-bearing accounts from which withdrawals or transfers can be made without delay, subject only to the notice period which the depository institution is required to reserve by law or regulation.

(5) Every real estate broker shall maintain a pooled interest-bearing escrow account for deposit of client funds, with the exception of property management trust accounts, which are nominal. As used in this section, a "nominal" deposit is a deposit of not more than five thousand dollars.

The interest accruing on this account, net of any reasonable and appropriate financial institution service charges or fees, shall be paid to the state treasurer for deposit in the Washington housing trust fund created in RCW 43.185.030 and the real estate education account created in section 4 of this act. Appropriate service charges or fees are those charges made by financial institutions on other demand deposit or "now" accounts. An agent may, but shall not be required to, notify the client of the intended use of such funds.

(6) All client funds not required to be deposited in the account specified in subsection (5) of this section shall be deposited in:

(a) A separate interest-bearing trust account for the particular client or client's matter on which the interest will be paid to the client; or

(b) The pooled interest-bearing trust account specified in subsection (5) of this section if the parties to the transaction agree.

The department of licensing shall promulgate regulations which will serve as guidelines in the choice of an account specified in subsection (5) of this section or an account specified in this subsection.

(7) For an account created under subsection (5) of this section, an agent shall direct the depository institution to:

(a) Remit interest or dividends, net of any reasonable and appropriate service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the state treasurer for deposit in the housing trust fund created by RCW 43.185.030 and the real estate (~~commission account created by RCW 18.85.220 as directed by RCW 18.85.315~~) education account created in section 4 of this act; and

(b) Transmit to the director of community development a statement showing the name of the person or entity for whom the remittance is spent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing person or firm.

(8) The director shall forward a copy of the reports required by subsection (7) of this section to the department of licensing to aid in the enforcement of the

requirements of this section consistent with the normal enforcement and auditing practices of the department of licensing.

(9) This section does not relieve any real estate broker from any obligation with respect to the safekeeping of clients' funds.

(10) Any violation by a real estate broker of any of the provisions of this section, or RCW 18.85.230, shall be grounds for revocation of the licenses issued to the broker.

**Sec. 3.** RCW 18.85.315 and 1987 c 513 s 9 are each amended to read as follows:

Remittances received by the treasurer pursuant to RCW 18.85.310 shall be divided between the housing trust fund created by RCW 43.185.030, which shall receive seventy-five percent and the real estate (~~commission~~) education account created by (~~RCW 18.85.220~~) section 4 of this act, which shall receive twenty-five percent.

**NEW SECTION. Sec. 4.** A new section is added to chapter 18.85 RCW to read as follows:

The real estate education account is created in the custody of the state treasurer. All moneys received for credit to this account pursuant to RCW 18.85.315 and all moneys derived from fines imposed under this chapter shall be deposited into the account. Any fund balance remaining in the real estate commission account attributable to moneys received under RCW 18.85.315 and moneys derived from fines imposed under this chapter as of the effective date of this act shall be transferred to the real estate education account. Expenditures from the account may be made only upon the authorization of the director or a duly authorized representative of the director, and may be used only for the purposes of carrying out the director's programs for education of real estate licensees and others in the real estate industry as described in RCW 18.85.040(4). All expenses and costs relating to the implementation or administration of, or payment of contract fees or charges for, the director's real estate education programs may be paid from this account. The account is subject to appropriation under chapter 43.88 RCW.

**NEW SECTION. Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 13, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 51

[Senate Bill 5385]

## UNIFORM COMMERCIAL CODE FUND CREATED

Effective Date: 7/1/93

AN ACT Relating to creating an appropriated uniform commercial code fund; amending RCW 62A.9-409; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 62A.9-409 and 1987 c 189 s 6 are each amended to read as follows:

In relation to Article 62A.9 RCW:

(1) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9-401(1)(a), shall be deposited, beginning July 1, 1993, to the uniform commercial code fund, hereby created in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(2) Unless a filing officer has filed with the secretary of state on or before June 1, 1967, his or her certificate that financing statements, as defined in RCW 62A.9-402, will not be accepted by him or her for filing on and after June 12, 1967, such filing officer shall accept such financing statements for filing on and after June 12, 1967. Financing statements so filed shall be received, marked, indexed, and filed as provided in Title 62A RCW. The filing fees for filing such statements shall be as provided in Title 62A RCW.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 15, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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CHAPTER 52

[Substitute Senate Bill 5937]

INDEBTEDNESS EXCLUDED FROM SEVEN PERCENT DEBT LIMIT

Effective Date: 7/1/93

AN ACT Relating to inclusion in the statutory seven percent debt limitation of indebtedness for which the state treasury is reimbursed for the principal and interest payments on the indebtedness; reenacting and amending RCW 39.42.060; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 39.42.060 and 1989 1st ex.s. c 14 s 17 and 1989 c 356 s 7 are each reenacted and amended to read as follows:

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in section 1(c) of Article VIII of the Washington state Constitution for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;

(6) Indebtedness authorized or incurred before the effective date of this act pursuant to statute (~~heretofore or hereafter enacted~~) which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW((;

~~To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee; and));~~

(7) Indebtedness authorized and incurred after the effective date of this act pursuant to statute that requires that the state treasury be reimbursed, in the

amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education; and

(8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness.

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 9, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 53

[Substitute Senate Bill 5487]

AGISTER LIENS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to agister liens; amending RCW 60.56.010, 60.56.015, 60.56.035, and 60.56.050; adding new sections to chapter 60.56 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 60.56 RCW to read as follows:

For purposes of this chapter "agister" means a farmer, ranchman, herder of cattle, livery and boarding stable keeper, veterinarian, or other person, to whom horses, mules, cattle, or sheep are entrusted for the purpose of feeding, herding, pasturing, training, caring for, or ranching.

Sec. 2. RCW 60.56.010 and 1989 c 67 s 1 are each amended to read as follows:

Any ((farmer, ranchman, herder of cattle, livery and boarding stable keeper, veterinarian, or any other person, to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, and training, caring for or ranching,)) agister shall have a lien upon ((said)) the horses, mules,

cattle, or sheep, and upon the proceeds or accounts receivable from such animals, for such amount that may be due for ~~((said))~~ the feeding, herding, pasturing, training, caring for, and ranching of the animals, and shall be authorized to retain possession of ~~((said))~~ the horses, mules ~~((or))~~, cattle, or sheep, until ~~((said))~~ the amount is paid or the lien expires, whichever first occurs. The lien attaches on the date such amounts are due and payable but are unpaid.

**Sec. 3.** RCW 60.56.015 and 1989 c 67 s 2 are each amended to read as follows:

~~((If a person))~~ An agister who holds a lien under RCW 60.56.010 ~~((provides, prior to the purchase or sale, written notice of the lien to buyers, or to persons selling on a commission basis for the animals' owners then the lien holder has perfected the lien))~~ shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of the posted notice to any lien creditor as defined in RCW 62A.9-301(3) if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW 62A.9-409. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 60.56 RCW to read as follows:

A party subject to a lien under RCW 60.56.010 shall notify (1) the lien holder of a potential sale of the animal or animals to which the lien is attached, (2) a potential buyer of the existence of the unsatisfied lien against the animal or animals for sale, and (3) any lien holder of record of the potential sale of the animal or animals and of the existence of the unsatisfied lien.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 60.56 RCW to read as follows:

A person injured by a violation of section 4 of this act may bring civil action in the appropriate court of jurisdiction to recover the actual damages sustained, together with the costs of the suit, including reasonable attorney fees and any other costs associated with satisfaction of the lien. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

If damages are awarded under this section, the court may impose on a liable party a civil fine of not more than one thousand dollars to be paid to the plaintiff.

**Sec. 6.** RCW 60.56.035 and 1987 c 233 s 3 are each amended to read as follows:

Any lien created by this chapter shall expire ~~((sixty))~~ one hundred eighty days after it attaches, unless, within that period, an action to enforce the lien is filed pursuant to RCW 60.56.050.



**Sec. 7.** RCW 60.56.050 and 1987 c 233 s 4 are each amended to read as follows:

Any person having a lien under the provisions of this chapter may enforce the same under chapter 60.10 RCW or, at the agister's option, by an action in any court of competent jurisdiction~~((; and said))~~. If enforcement is through court proceeding, the property may be sold on execution for the purpose of satisfying the amount of ~~((such))~~ the judgment and costs of sale, together with the proper costs of keeping the same up to the time of ~~((said))~~ the sale.

Passed the Senate March 12, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 54

[Engrossed Senate Bill 5411]

FUEL TAXES—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to fuel taxes; and amending RCW 82.36.010, 82.36.030, 82.36.110, 82.36.230, 82.37.020, 82.38.090, and 46.10.170.

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

**Sec. 1.** RCW 82.36.010 and 1991 c 339 s 13 are each amended to read as follows:

For the purposes of this chapter:

(1) "Motor vehicle" means every vehicle that is in itself a self-propelled unit, equipped with solid rubber, hollow-cushion rubber, or pneumatic rubber tires and capable of being moved or operated upon a public highway, except motor vehicles used as motive power for or in conjunction with farm implements and machines or implements of husbandry;

(2) "Motor vehicle fuel" means gasoline or any other inflammable gas or liquid, by whatsoever name such gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats;

(3) "Distributor" means every person who refines, manufactures, produces, or compounds motor vehicle fuel and sells, distributes, or in any manner uses it in this state; also every person engaged in business as a bona fide wholesale merchant dealing in motor vehicle fuel who either acquires it within the state from any person refining it within or importing it into the state, on which the tax has not been paid, or imports it into this state and sells, distributes, or in any manner uses it in this state; also every person who acquires motor vehicle fuel, on which the tax has not been paid, and exports it by commercial motor vehicle as defined in RCW 82.37.020 to a location outside the state. For the purposes

of liability for a county fuel tax, "distributor" has that meaning defined in the county ordinance imposing the tax;

(4) "Service station" means a place operated for the purpose of delivering motor vehicle fuel into the fuel tanks of motor vehicles;

(5) "Department" means the department of licensing;

(6) "Director" means the director of licensing;

(7) "Dealer" means any person engaged in the retail sale of liquid motor vehicle fuels;

(8) "Person" means every natural person, firm, partnership, association, or private or public corporation;

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for purposes of vehicular travel;

(10) "Broker" means every person, other than a distributor, engaged in business as a broker, jobber, or wholesale merchant dealing in motor vehicle fuel or other petroleum products used or usable in propelling motor vehicles, or in other petroleum products which may be used in blending, compounding, or manufacturing of motor vehicle fuel;

(11) "Producer" means every person, other than a distributor, engaged in the business of producing motor vehicle fuel or other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel;

(12) "Distribution" means all withdrawals of motor vehicle fuel for delivery to others, to retail service stations, or to unlicensed bulk storage plants;

(13) "Bulk storage plant" means, pursuant to the licensing provisions of RCW 82.36.070, any plant, under the control of the distributor, used for the storage of motor vehicle fuel to which no retail outlets are directly connected by pipe lines;

(14) "Marine fuel dealer" means any person engaged in the retail sale of liquid motor vehicle fuel whose place of business and or sale outlet is located upon a navigable waterway;

(15) "Alcohol" means alcohol that is produced from renewable resources;

(16) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

**Sec. 2.** RCW 82.36.030 and 1991 c 339 s 14 are each amended to read as follows:

Every distributor shall on or before the twenty-fifth day of each calendar month file, on forms furnished by the ~~((director))~~ department, a statement signed by the distributor or his authorized agent showing the total number of gallons of motor vehicle fuel sold, distributed, or used by such distributor within this state during the preceding calendar month and, for counties within which an additional excise tax on motor vehicle fuel has been levied by that jurisdiction under RCW

82.80.010, showing the total number of gallons of motor vehicle fuel sold, distributed, or used by the distributor within the boundaries of the county during the preceding calendar month.

If any distributor fails to file such report, the ~~((director))~~ department shall proceed forthwith to determine from the best available sources, the amount of motor vehicle fuel sold, distributed, or used by such distributor for the unreported period, and said determination shall be presumed to be correct for that period until proved by competent evidence to be otherwise. The ~~((director))~~ department shall immediately assess the excise tax in the amount so determined, adding thereto a penalty of up to ten percent for failure to report. Such penalty shall be cumulative of other penalties herein provided. All statements filed with the ~~((director))~~ department, as required in this section, shall be public records.

If any distributor establishes by a fair preponderance of evidence that his or her failure to file a report by the due date was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty imposed by this section.

**Sec. 3.** RCW 82.36.110 and 1961 c 15 s 82.36.110 are each amended to read as follows:

If any person liable for the tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person in the prosecution of business or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof.

The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the ~~((director))~~ department has filed notice of such lien in the office of the county auditor of the county in which the principal place of business of the taxpayer is located.

The auditor, upon presentation of a notice of lien, and without requiring the payment of any fee, shall file and index it in the manner now provided for deeds and other conveyances except that he shall not be required to include, in the index, any description of the property affected by the lien. The lien shall continue until the amount of the tax, together with any penalties and interest subsequently accruing thereon, is paid. The ~~((director))~~ department may issue a certificate of release of lien when the amount of the tax, together with any penalties and interest subsequently accruing thereon, has been satisfied, and such release may be recorded with the auditor of the county in which the notice of lien has been filed.

The ~~((director))~~ department shall furnish to any person applying therefor a certificate showing the amount of all liens for motor vehicle fuel tax, penalties and interest that may be of record in the files of the ~~((director))~~ department against any person under the provisions of this chapter.

**Sec. 4.** RCW 82.36.230 and 1989 c 193 s 1 are each amended to read as follows:

The provisions of this chapter requiring the payment of taxes do not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a qualified distributor~~((, nor to sales by a distributor of motor vehicle fuel for export to another state or country by the purchaser,))~~ nor to any motor vehicle fuel sold by a qualified distributor to the armed forces of the United States or to the national guard for use exclusively in ships or for export from this state. The distributor shall report such imports, exports and sales to the ~~((director))~~ department at such times, on such forms, and in such detail as the ~~((director))~~ department may require, otherwise the exemption granted in this section is null and void, and all fuel shall be considered distributed in this state fully subject to the provisions of this chapter. Each invoice covering exempt sales shall have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly marked thereon.

To claim any exemption from taxes under this section on account of sales by a licensed distributor of motor vehicle fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the ~~((director))~~ department may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring, or both, of the sales or movement of motor vehicle fuel in that state or foreign jurisdiction.

To claim any exemption from taxes under this section on account of sales of motor vehicle fuel to the armed forces of the United States or to the national guard, the distributor shall be required to execute an exemption certificate in such form as shall be furnished by the ~~((director))~~ department, containing a certified statement by an authorized officer of the armed forces having actual knowledge of the purpose for which the exemption is claimed. Any claim for exemption based on such sales shall be made by the distributor within six months of the date of sale. The provisions of this section exempting motor vehicle fuel sold to the armed forces of the United States or to the national guard from the tax imposed hereunder do not apply to any motor vehicle fuel sold to contractors purchasing such fuel either for their own account or as the agents of the United States or the national guard for use in the performance of contracts with the armed forces of the United States or the national guard.

The ~~((director))~~ department may at any time require of any distributor any information the ~~((director))~~ department deems necessary to determine the validity

of the claimed exemption, and failure to supply such data will constitute a waiver of all right to the exemption claimed. The ~~((director))~~ department is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms to be used by distributors in reporting to the ~~((director))~~ department so as to prevent evasion of the tax imposed by this chapter.

Upon request from the officials to whom are entrusted the enforcement of the motor fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces, or the Dominion of Canada, the ~~((director))~~ department may forward to such officials any information which the ~~((director))~~ department may have relative to the import or export of any motor vehicle fuel by any distributor: PROVIDED, That such governmental unit furnish like information to this state.

**Sec. 5.** RCW 82.37.020 and 1983 c 3 s 223 are each amended to read as follows:

The following words, terms, and phrases when used in this chapter have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Commercial motor vehicle" means any motor vehicle used ~~((or maintained for the transportation of persons for hire, or any vehicle designed, used or maintained primarily for the transportation of commodities, merchandise, produce, freight and animals)),~~ designed, or maintained for transportation of persons or property and (a) having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or (b) having three or more axles regardless of weight; or (c) is used in combination, when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. "Commercial motor vehicle" ~~does~~ not include recreational vehicles.

(2) "Motor carrier" means and includes a natural person, individual, partnership, firm, association, or private or public corporation, which is engaged in interstate commerce and which operates or causes to be operated on any highway in this state any commercial motor vehicle.

(3) "Operations", when applied to a motor carrier, means operations of all commercial motor vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated into or out of or through this state.

(4) "Motor vehicle fuel" means gasoline or any other inflammable liquids, by whatsoever name such liquid may be known or sold, the use of which is as fuel for the propulsion of commercial motor vehicles except fuel as defined in chapter 82.38 RCW.

(5) "Use" means and includes the consumption of motor vehicle fuel by any motor carrier in a commercial motor vehicle for the propulsion thereof upon the public highways of this state.

(6) "Motor vehicle fuel importer for use" means and includes any motor carrier importing motor vehicle fuel into this state in the fuel supply tank or tanks of any commercial motor vehicle for use in propelling said vehicle upon the highways of this state.

(7) "Public highways" means and includes every way, lane, road, street, boulevard, and every way or place open as a matter of right to public vehicular travel both inside and outside the limits of cities and towns.

(8) "Director" means the director of licensing.

**Sec. 6.** RCW 82.38.090 and 1991 c 339 s 6 are each amended to read as follows:

It shall be unlawful for any person to act as a special fuel dealer, a special fuel supplier or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's, a special fuel supplier's or a special fuel user's license issued to him by the department. A special fuel supplier's license authorizes a person to sell special fuel without collecting the special fuel tax to other suppliers and dealers holding valid special fuel licenses.

A special fuel dealer's license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user without collecting the special fuel tax. Special fuel dealers and suppliers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license must collect the special fuel tax at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.

A special fuel user's license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase (~~unless the purchase is made from an unattended keylock metered pump, cardrol, or such similar dispensing devices~~). Special authorization may be given to farmers, logging companies, and construction companies to purchase special fuel directly into the supply tanks of nonhighway equipment or into portable slip tanks for nonhighway use without payment of the special fuel tax. Persons utilizing special fuel for heating purposes only are not required to be licensed.

Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six

thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province.

**Sec. 7.** RCW 46.10.170 and 1990 c 42 s 117 are each amended to read as follows:

From time to time, but at least once each ((~~biennium~~)) four years, the department shall determine the amount or proportion of moneys paid to it as motor vehicle fuel tax, based on the tax rate in effect January 1, 1990, which is tax on snowmobile fuel. Such determination may be made in any manner which is, in the judgment of the director, reasonable, but the manner used to make such determination shall be reported at the end of each ((~~biennium~~)) four-year period to the legislature. To offset the actual cost of making such determination the treasurer shall retain in, and the department is authorized to expend from, the motor vehicle fund a sum equal to such actual cost.

Passed the Senate March 17, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 55

[Engrossed Senate Bill 5423]

### PUBLIC TRANSPORTATION POLICY PLAN DEVELOPMENT

Effective Date: 7/25/93

AN ACT Relating to development of a public transportation policy plan; and adding a new section to chapter 47.01 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 47.01 RCW to read as follows:

The state-interest component of the state-wide transportation plan must include a state public transportation plan that recognizes that while public transportation service is essentially a local responsibility in Washington, there is significant state interest in assuring that viable public transportation services are available throughout the state. The public transportation plan shall:

- (1) Articulate the state vision of and interest in public transportation and provide quantifiable objectives, including benefits indicators;
- (2) Identify the goals for public transportation and the roles of federal, state, regional, and local entities in achieving those goals;
- (3) Recommend mechanisms for coordinating federal, state, regional, and local planning for public transportation;

(4) Recommend mechanisms for coordinating public transportation with other transportation services and modes;

(5) Recommend criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and

(6) Recommend a state-wide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and private providers of public transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community development, social and health services, and ecology, the state energy office, the office of financial management, and the office of the governor.

The department shall submit an initial report to the legislative transportation committee by December 1, 1993, and shall provide annual reports summarizing the plan's progress each year thereafter.

Passed the Senate March 17, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 56**

[Substitute Senate Bill 5432]

**DISCRIMINATION IN MORTGAGE LENDING STUDY**

Effective Date: 7/25/93

AN ACT Relating to a study of discrimination based on race and national origin in mortgage lending; and creating new sections.

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

NEW SECTION. **Sec. 1.** The federal home mortgage disclosure act has recently required depository institutions to analyze and make available first-time loan and rejection rates by race, national origin, and income, among other factors. According to these data, some depository institutions operating in Washington state have rejected a disproportionate number of mortgage applications from minorities, even when income is taken into account. With this study, the legislature intends to support the lending institutions in their attempts to remedy this problem.

NEW SECTION. **Sec. 2.** The supervisor of banking and supervisor of savings and loan associations shall perform a study of the problem of discrimination based on race and national origin in home mortgage lending after 1990. The study must address the nature of the problem and why it is occurring, what depository institutions around the country and in this state are doing to solve the



problem, and suggest what depository institutions operating in this state could do to solve the problem. The supervisor of banking and supervisor of savings and loan associations shall report the results of the study to the committees on financial institutions and insurance of the house of representatives and the committee on labor and commerce of the senate by December 1, 1993. For purposes of this section, the term "depository institution" means a commercial bank, savings bank, savings and loan association, building and loan association, homestead association including cooperative banks, or credit union that makes federally related mortgage loans as determined by the federal reserve board, mortgage banking subsidiary of a bank holding company or savings and loan holding company, or savings and loan service corporation that originates or purchases loans.

Passed the Senate March 10, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 57

[Senate Bill 5444]

### MEDICAL ASSISTANCE COVERAGE OF HOSPICE CARE

**Effective Date:** 7/25/93

AN ACT Relating to medical assistance coverage of hospice care and services; amending RCW 74.09.520; and reenacting and amending RCW 74.09.700.

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

**Sec. 1.** RCW 74.09.520 and 1991 sp.s. c 8 s 9 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a handicapped child by a school district as part of an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100. For the purposes of this section, the department may not cut off any prescription

medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services. Services included in an individualized education program for a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not qualify as medical assistance prior to the implementation of the funding process developed under RCW 74.09.524.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved by a physician and reviewed by a nurse every ninety days.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds. (~~The hospice benefit under this section shall terminate on June 30, 1993, unless extended by the legislature.~~)

**Sec. 2.** RCW 74.09.700 and 1991 sp.s. c 9 s 7 and 1991 sp.s. c 8 s 10 are each reenacted and amended to read as follows:

(1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility

requirements established by the department. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities and residents of intermediate care facilities for the mentally retarded who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the department: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for the mentally retarded; home health services; hospice services; other laboratory and x-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services.

Passed the Senate February 25, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 58

[Senate Bill 5546]

## UNEMPLOYMENT COMPENSATION—REVISED ELIGIBILITY PROVISIONS

Effective Date: 4/19/93

AN ACT Relating to unemployment compensation; amending RCW 50.04.165, 50.20.098, and 50.22.020; creating a new section; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 50.04.165 and 1991 c 72 s 57 are each amended to read as follows:

~~((1))~~ Services performed by ~~((corporate officers as defined in subsection (2) of this section))~~ a person appointed as an officer of a corporation under RCW 23B.08.400, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section.

~~((2) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer.)~~

**Sec. 2.** RCW 50.20.098 and 1989 c 92 s 1 are each amended to read as follows:

(1) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who ~~((has been))~~ was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise ~~((is))~~ was permanently residing in the United States under color of law ~~((t))~~ at the time such services were performed, including an alien who ~~((is))~~ was lawfully present in the United States as a result of the application of ~~((8 U.S.C. Sec. 1153(a)(7) or))~~ the provisions of 8 U.S.C. Sec. 1182(d)(5): PROVIDED, That any modifications to 26 U.S.C. Sec. 3304(a)(14) as provided by PL 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by 26 U.S.C. Sec. 3301 shall be deemed applicable under this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

**Sec. 3.** RCW 50.22.020 and 1981 c 35 s 8 are each amended to read as follows:

When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: PROVIDED, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: PROVIDED, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing and was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981; PROVIDED, That the provisions of subsections (1) through (7) of this section shall not apply to those weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

NEW SECTION. Sec. 4. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 5. 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. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 6, 1993.

Passed the Senate March 16, 1993.  
Passed the House April 7, 1993.  
Approved by the Governor April 19, 1993.  
Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 59

[Senate Bill 5572]

### IDENTIFICATION OF ENVIRONMENTAL COSTS OF TRANSPORTATION PROJECTS

Effective Date: 7/25/93

AN ACT Relating to the identification of environmental costs for transportation projects; and creating a new section.

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

**NEW SECTION. Sec. 1.** Recognizing the importance of maintaining the quality of life in Washington state, the citizens of this state demand protection and preservation of our scarce natural resources. Citizens also demand an efficient and effective transportation system. The departments of transportation, ecology, fisheries, and wildlife and the Puget Sound water quality authority have worked jointly to develop cooperative approaches for mitigating environmental impacts resulting from transportation projects. Nevertheless, many transportation projects are costing more than was budgeted due to unanticipated and extensive environmental considerations. It is the intent of the legislature to find a process for accessing, budgeting, and accounting for environmental costs related to significant transportation projects in order to determine whether the environmental costs exceed the transportation benefits of a project.

Therefore, the department of transportation shall undertake a pilot program in at least one transportation district that will serve as a case study for the entire department. The department shall identify and cost out the discrete environmental elements of a representative sampling of transportation projects. The environmental elements should include, but not necessarily be limited to, wetlands, storm water, hazardous waste, noise, fish, and wildlife. The department shall also consider an assessment of the cost impacts resulting from delays associated with permitting requirements.

It is the intent of the legislature that the environmental cost estimates be developed during a detailed scoping process that will include preliminary engineering and design. After the detailed scoping process and design report is complete, the department shall submit project-specific recommendations and cost estimates to the transportation commission before approval is granted for the construction phase of the projects.

Based upon the findings of the pilot program the transportation commission shall recommend policies to the legislative transportation committee regarding: (1) The current practice of appropriating design and construction dollars simultaneously; (2) identification of reasonable thresholds for environmental

costs; (3) budget and accounting modifications that may be warranted in order to accurately capture environmental costs associated with transportation projects; and (4) modification to the priority array statutes, chapter 47.05 RCW.

Passed the Senate March 13, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 60

[Senate Bill 5693]

### COUNTY VEHICLE LICENSE FEES EXEMPTION

Effective Date: 7/25/93

AN ACT Relating to county vehicle license fees; and amending RCW 82.80.020.

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

**Sec. 1.** RCW 82.80.020 and 1991 c 318 s 13 are each amended to read as follows:

(1) The legislative authority of a county may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.060 and is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county may develop and initiate ((a refund)) an exemption process of the fifteen dollar fee ((to)) for the registered owners of vehicles residing within the boundaries of the county (a) who are sixty-one years old or older at the time ((of)) payment of the fee is due and whose household income for the previous calendar year is ((eighteen thousand dollars or)) less than an amount prescribed by the county legislative authority, or (b) who has a physical disability ((and who has paid the fifteen dollar additional fee)).



Passed the Senate March 17, 1993.  
Passed the House April 8, 1993.  
Approved by the Governor April 19, 1993.  
Filed in Office of Secretary of State April 19, 1993.

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**CHAPTER 61**

[Senate Bill 5696]

**DEPARTMENT OF RETIREMENT SYSTEMS—ORGANIZATION INTO  
THREE DIVISIONS****Effective Date: 7/25/93**

AN ACT Relating to divisions of the department of retirement systems; and amending RCW 41.50.050.

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

**Sec. 1.** RCW 41.50.050 and 1987 c 505 s 24 are each amended to read as follows:

The director shall:

(1) Have the authority to organize the department into not more than ~~((two))~~ three divisions, each headed by an assistant director;

(2) Have free access to all files and records of various funds assigned to the department and inspect and audit the files and records as deemed necessary;

(3) Employ personnel to carry out the general administration of the department;

(4) Submit an annual written report of the activities of the department to the governor and the chairs of the appropriate legislative committees with one copy to the staff of each of the committees, including recommendations for statutory changes the director believes to be desirable;

(5) Adopt such rules and regulations as are necessary to carry out the powers, duties, and functions of the department pursuant to the provisions of chapter 34.05 RCW.

Passed the Senate March 12, 1993.  
Passed the House April 8, 1993.  
Approved by the Governor April 19, 1993.  
Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 62

[Senate Bill 5703]

LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS  
RESPONSIBILITIES OF EMPLOYMENT SECURITY DEPARTMENT

Effective Date: 7/1/93

AN ACT Relating to codifying the labor market information and economic analysis responsibilities of the employment security department; amending RCW 50.38.010, 50.38.030, and 50.16.050; adding new sections to chapter 50.38 RCW; creating a new section; repealing RCW 50.12.260; making an appropriation; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 50.38.010 and 1982 c 43 s 1 are each amended to read as follows:

It is the intent of this chapter to establish ~~((a single state administered occupational information service, including the state occupational forecast))~~ the duties and authority of the employment security department relating to labor market information and economic analysis. State and federal law mandate the use of labor market information in the planning, coordinating, management, implementation, and evaluation of certain programs. Often this labor market information is also needed in studies for the legislature and state programs, like those dealing with growth management, community diversification, export assistance, prison industries, energy, agriculture, social services, and environment. Employment, training, education, job creation, and other programs are often mandated without adequate federal or state funding for the needed labor market information. Clarification of the department's duties and authority will assist users of state and local labor market information products and services to have realistic expectations and provide the department authority to recover actual costs for labor market information products and services developed in response to individual requests.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Labor market information" means the body of information generated from measurement and evaluation of the socioeconomic factors and variables influencing the employment process in the state and specific labor market areas. These socioeconomic factors and variables affect labor demand and supply relationships and include:

(a) Labor force information, which includes but is not limited to employment, unemployment, labor force participation, labor turnover and mobility, average hours and earnings, and changes and characteristics of the population and labor force within specific labor market areas and the state;

(b) Occupational information, which includes but is not limited to occupational supply and demand estimates and projections, characteristics of occupations, wage levels, job duties, training and education requirements, conditions of employment, unionization, retirement practices, and training opportunities;

(c) Economic information, which includes but is not limited to number of business starts and stops by industry and labor market area, information on employment growth and decline by industry and labor market area, employer establishment data, and number of labor-management disputes by industry and labor market area; and

(d) Program information, which includes but is not limited to program participant or student information gathered in cooperation with other state and local agencies along with related labor market information to evaluate the effectiveness, efficiency, and impact of state and local employment, training, education, and job creation efforts in support of planning, management, implementation, and evaluation.

(2) "Labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the bureau of labor statistics of the department of labor in defining such areas or similar criteria established by the governor. The area generally takes the name of its community. The boundaries depend primarily on economic and geographic factors. Washington state is divided into labor market areas, which usually include a county or a group of contiguous counties.

(3) "Labor market analysis" means the measurement and evaluation of economic forces as they relate to the employment process in the local labor market area. Variables affecting labor market relationships include, but are not limited to, such factors as labor force changes and characteristics, population changes and characteristics, industrial structure and development, technological developments, shifts in consumer demand, volume and extent of unionization and trade disputes, recruitment practices, wage levels, conditions of employment, and training opportunities.

(4) "Public records" has the same meaning as set forth in RCW 42.17.020.

(5) "Department" means the employment security department.

**Sec. 3.** RCW 50.38.030 and 1985 c 466 s 66 are each amended to read as follows:

The employment security department shall consult with the following agencies prior to the issuance of the state occupational forecast:

- (1) Office of financial management;
- (2) Department of trade and economic development;
- (3) Department of labor and industries;
- (4) State board for community and technical colleges ~~((education))~~;
- (5) Superintendent of public instruction;
- (6) Department of social and health services;
- (7) Department of community development;
- (8) ~~((Commission for vocational education))~~ Work force training and education coordinating board; and

(9) Other state and local agencies as deemed appropriate by the commissioner of the employment security department.

These agencies shall cooperate with the employment security department, submitting information relevant to the generation of occupational forecasts.

**NEW SECTION. Sec. 4.** The department shall submit an annual report to the legislature and the governor that includes, but is not limited to:

(1) Identification and analysis of industries in the United States, Washington state, and local labor markets with high levels of seasonal, cyclical, and structural unemployment;

(2) The industries and local labor markets with plant closures and mass lay-offs and the number of affected workers;

(3) An analysis of the major causes of plant closures and mass lay-offs;

(4) The number of dislocated workers and persons who have exhausted their unemployment benefits, classified by industry, occupation, and local labor markets;

(5) The experience of the unemployed in their efforts to become reemployed. This should include research conducted on the continuous wage and benefit history;

(6) Five-year industry and occupational employment projections; and

(7) Annual and hourly average wage rates by industry and occupation.

**NEW SECTION. Sec. 5.** The department shall have the following duties:

(1) Oversight and management of a state-wide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;

(2) Produce local labor market information packages for the state's counties, including special studies and job impact analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts; and

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts.

**NEW SECTION. Sec. 6.** To implement this chapter, the department has authority to:

(1) Establish mechanisms to recover actual costs incurred in producing and providing otherwise nonfunded labor market information.

(a) If the commissioner, in his or her discretion, determines that providing labor market information is in the public interest, the requested information may be provided at reduced costs.

(b) The department shall provide access to labor market information products that constitute public records available for public inspection and copying under chapter 42.17 RCW, at fees not exceeding those allowed under RCW 42.17.300 and consistent with the department's fee schedule;

(2) Receive federal set aside funds from several federal programs that are authorized to fund state and local labor market information and are required to use such information in support of their programs;

(3) Enter into agreements with other public agencies for statistical analysis, research, or evaluation studies of local, state, and federally funded employment, training, education, and job creation programs to increase the efficiency or quality of service provided to the public consistent with chapter 50.13 RCW;

(4) Coordinate with other state agencies to study ways to standardize federal and state multi-agency administrative records, such as unemployment insurance information and other information to produce employment, training, education, and economic analysis needed to improve labor market information products and services; and

(5) Produce agricultural labor market information and economic analysis needed to facilitate the efficient and effective matching of the local supply and demand of agricultural labor critical to an effective agricultural labor exchange in Washington state. Information collected for an agricultural labor market information effort will be coordinated with other federal, state, and local statistical agencies to minimize reporting burden through cooperative data collection efforts for statistical analysis, research, or studies.

**NEW SECTION.** Sec. 7. Moneys received under section 6(1) of this act to cover the actual costs of nonfunded labor market information shall be deposited in the unemployment compensation administration fund and expenditures shall be authorized only by appropriation.

**Sec. 8.** RCW 50.16.050 and 1959 c 170 s 3 are each amended to read as follows:

(1) There is hereby established a fund to be known as the unemployment compensation administration fund. Except as otherwise provided in this section, all moneys which are deposited or paid into this fund are hereby made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section 302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant

to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of (~~section 5501 of Remington's Revised Statutes, as amended,~~) RCW 43.01.050 shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.

(2) Notwithstanding any provision of this section(~~(7)~~):

(a) All money requisitioned and deposited in this fund pursuant to RCW 50.16.030(6) shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in RCW 50.16.030(4), (5) and (6).

(b) All money deposited in this fund pursuant to section 7 of this act shall be used only after appropriation and only for the purposes of section 6 of this act.

NEW SECTION. Sec. 9. The sum of one hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1995, from the unemployment compensation administration fund to the employment security department for the purposes of section 6 of this act. However, expenditures from this appropriation shall be limited to the amount deposited during the biennium in the unemployment compensation administration fund under section 7 of this act.

NEW SECTION. Sec. 10. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 11. RCW 50.12.260 and 1987 c 284 s 5 are each repealed.

**NEW SECTION. Sec. 12.** Sections 2 and 4 through 7 of this act are each added to chapter 50.38 RCW.

**NEW SECTION. Sec. 13.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 16, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 63

[Engrossed Senate Bill 5729]

### EMERGENCY ASSISTANCE PROGRAM—ELIGIBILITY

Effective Date: 7/25/93

AN ACT Relating to the family emergency assistance program; and amending RCW 74.04.660. Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 74.04.660 and 1989 c 11 s 26 are each amended to read as follows:

The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall not be provided for more than two months of assistance in any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits may also be provided for family reconciliation services, family preservation services, home-based services, short-term substitute care in a licensed agency as defined in RCW 74.15.020, crisis nurseries, therapeutic child care, or other necessary services as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3) ~~((In determining eligibility for this program, the department shall consider all cash resources as being available to meet need.~~

(4)) (a) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section. ~~((Eligibility for this program does not automatically entitle a recipient to medical assistance.))~~

(b) Eligibility standards and resource levels for this program ~~((shall be stricter than the standards for eligibility and resource levels for the aid to families with dependent children program.~~

(5)) may be income up to one hundred percent of the federal poverty level, and may include consideration of resource levels.

(c) Eligibility for benefits or services under this section does not automatically entitle a recipient to medical assistance.

(4) The department shall seek federal emergency assistance funds to supplement the state funds appropriated for the operation of this program((-If)) as long as other departmental programs are not adversely affected by the receipt of federal funds ((would require a reduction of funds available to households not receiving aid to families with dependent children below the amount of state funds appropriated for this program, the department may operate a program utilizing only state funds unless the aid to families with dependent children additional requirement program is substantially reduced in scope)).

~~((6))~~ (5) If state funds appropriated for the consolidated emergency assistance program are exhausted, the department may discontinue the program.

Passed the Senate March 15, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 64

[Engrossed Senate Bill 5831]

### UTILITY PAYMENTS TO OWNERS OF ELECTRICALLY HEATED RESIDENTIAL BUILDINGS

Effective Date: 4/1993

AN ACT Relating to specifying that payments to building owners authorized under RCW 19.27A.035 are available only if the primary heat source of a structure is electricity; amending RCW 19.27A.035; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The legislature finds that when new energy-efficient residential building codes were enacted in 1990, payments to certain building owners were required in an effort to offset the higher costs of more stringent component levels of residences heated with electricity. The legislature further finds that through the code enacted by the state building code council it is possible for owners of residences with other primary heat sources to qualify for these payments even though the costs of these payments are borne by electricity ratepayers, and that this situation should be corrected.

**Sec. 2.** RCW 19.27A.035 and 1990 c 2 s 4 are each amended to read as follows:

(1) Electric utilities shall make payments to the owner at the time of construction of a newly constructed residential building with electric resistance space heat built in compliance with the requirements of the Washington state energy code adopted pursuant to RCW 19.27A.020 or a residential energy code



in effect pursuant to RCW 19.27A.020(7). Payments made under this section are only required for residences in which the primary heat source is electric resistance space heat. All or a portion of the funds for payments may be accepted from federal agencies or other sources. Payments are required for residential buildings on which construction has begun on or after July 1, 1991, and prior to July 1, 1995. Payments in an amount equal to a fixed sum of at least nine hundred dollars per single family residence are required for such buildings so constructed which are single family residences having two thousand square feet or less of finished floor area. Payments in an amount equal to a fixed sum of at least three hundred ninety dollars per multifamily residential unit, are required for such buildings so constructed which are multifamily residential units. For purposes of this section, a zero lot line home and each unit in a duplex and each attached housing unit in a planned unit development shall each be considered a single family residence.

(2) Electric utilities which provide electrical service in jurisdictions in which the local government has adopted an energy code not preempted by RCW 19.27A.020(7)(b) shall make payments as provided in subsection (1) of this section for residential buildings on which construction has begun on or after March 1, 1990, and prior to July 1, 1991.

(3) Nothing in this section shall prohibit an electric utility from providing incentives in excess of the payments required by this section or from providing additional incentives for energy efficiency measures in excess of those required under RCW 19.27A.020.

(4) This section is null and void if any electric utility providing electric service to its customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and if such electric utility is unable to obtain from the agency at least fifty percent of the funds to make the payments required by this section. This subsection shall expire June 30, 1995.

(5) The utilities and transportation commission shall provide an appropriate regulatory mechanism which allows a utility regulated by the commission to recover expenses incurred by the utility in making payments under this section.

(6) Subsections (1) through (3) of this section shall expire July 1, 1996.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 15, 1993.

Passed the House April 7, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

## CHAPTER 65

[Senate Bill 5905]

## COUNTY ROAD ADMINISTRATION BOARD—REVISED DUTIES AND PROCEDURES

Effective Date: 7/25/93

AN ACT Relating to the county road administration board; and amending RCW 36.78.020, 36.78.050, and 36.78.070.

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

**Sec. 1.** RCW 36.78.020 and 1991 c 363 s 82 are each amended to read as follows:

"Standards of good practice" shall mean general and uniform practices formulated and adopted by the board relating to the administration of county roads and the safe and efficient movement of people and goods over county roads, which shall apply to engineering, design procedures, maintenance, traffic control, safety, planning, programming, road classification, road inventories, budgeting and accounting procedures, management practices, equipment policies, ((and)) personnel policies, and effective use of transportation-related information technology.

**Sec. 2.** RCW 36.78.050 and 1965 ex.s. c 120 s 5 are each amended to read as follows:

~~((The annual meeting of the county road administration board shall be during the first week in July of each year at which time the board shall elect a chairman from its own membership who shall hold office for one year. Election as chairman shall not affect the member's right to vote on all matters before the board.))~~ The board shall meet ~~((at such other times as it deems advisable but))~~ at least once quarterly and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter. The board shall elect a chair from its own membership who shall hold office for one year. Election as chair does not affect the member's right to vote on all matters before the board.

**Sec. 3.** RCW 36.78.070 and 1990 c 266 s 2 are each amended to read as follows:

The county road administration board shall:

(1) Establish by rule, standards of good practice for ~~((county road))~~ the administration of county roads and the efficient movement of people and goods over county roads;

(2) Establish reporting requirements for counties with respect to the standards of good practice adopted by the board;

(3) Receive and review reports from counties and reports from its executive director to determine compliance with legislative directives and the standards of good practice adopted by the board;

(4) Advise counties on issues relating to county roads and the safe and efficient movement of people and goods over county roads and assist counties

in developing uniform and efficient transportation-related information technology resources;

(5) Report annually ((on)) before the ((first)) fifteenth day of ((July)) January, and throughout the year as appropriate, to the state department of transportation and to the chairs of the legislative transportation committee and the house and senate transportation committees, and to other entities as appropriate on the status of county road administration in each county, including one copy to the staff of each of the committees. The annual report shall contain recommendations for improving administration of the county road programs;

((5)) (6) Administer the rural arterial program established by chapter 36.79 RCW and the county arterial preservation program established by RCW 46.68.095, as well as any other programs provided for in law.

Passed the Senate March 15, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 66

[Engrossed Substitute Senate Bill 5482]

### MOBILE HOME PARKS—RESIDENT OWNERSHIP IN EVENT OF SALE OF PARK

**Effective Date:** 7/25/93

AN ACT Relating to mobile home parks; amending RCW 59.22.020, 59.20.030, 59.20.070, 59.20.073, 59.20.080, and 59.20.130; adding new sections to chapter 59.22 RCW; adding a new section to chapter 59.20 RCW; adding a new chapter to Title 59 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that mobile home parks provide a significant source of homeownership for many Washington residents, but increasing rents and low vacancy rates, as well as the pressure to convert mobile home parks to other uses, increasingly make mobile home park living insecure for mobile home owners. The legislature also finds that many homeowners who reside in mobile home parks are also those residents most in need of reasonable security in the siting of their manufactured homes. It is the intent of the legislature to encourage and facilitate the conversion of mobile home parks to resident ownership in the event of a voluntary sale of the park.

**NEW SECTION. Sec. 2.** An obligation of good faith is imposed on the parties in the conduct of transactions affected by this chapter. Rights created by this chapter are forfeited by any party failing to act in good faith. Further obligations under this chapter on other parties are also discharged by a failure to act in good faith.

**NEW SECTION. Sec. 3.** If a qualified tenant organization gives written notice to the mobile home park owner where the tenants reside that they have a

present and continuing desire to purchase the mobile home park, the park may then be sold only according to this chapter.

"Notice" for the purposes of this section means a writing signed by sixty percent of the tenants in the park indicating that they desire to participate in the purchase of the park, and that they are contractually bound to the other signators of the notice to participate by purchasing an ownership interest that will entitle them to occupy a mobile home space for the remainder of their life or for a term of at least fifteen years.

**NEW SECTION. Sec. 4.** (1) "Mobile home park" means the same as defined in RCW 59.20.030.

(2)(a) The terms "sold" or "sale" for the purposes of this chapter have their ordinary meaning and include: (i) A conveyance, grant, assignment, quitclaim, or transfer of ownership or title to real property and improvements that comprise the mobile home park, or mobile homes, for a valuable consideration; (ii) a contract for the conveyance, grant, assignment, quitclaim, or transfer; (iii) a lease with an option to purchase the real property and improvements, or mobile home, or any estate or interest therein; or (iv) other contract under which possession of the property is given to the purchaser, or any other person by his or her direction, where title is retained by the vendor as security for the payment of the purchase price. These terms also include any other transfer of the beneficial or equitable interest in the mobile home park such as a transfer of equity stock or other security evidencing ownership that results in a change in majority interest ownership.

(b) The terms "sale" or "sold" do not include: (i) A transfer by gift, devise, or inheritance; (ii) a transfer of a leasehold interest other than of the type described in this subsection; (iii) a cancellation or forfeiture of a vendee's interest in a contract for the sale of the mobile home park; (iv) a deed in lieu of foreclosure of a mortgage; (v) the assumption by a grantee of the balance owing on an obligation that is secured by a mortgage or deed in lieu of forfeiture of the vendee's interest in a contract of sale where no consideration passes otherwise; (vi) the partition of property by tenants in common by agreement or as the result of a court decree; (vii) a transfer, conveyance, or assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or dissolution or in fulfillment of a property settlement agreement incident thereto; (viii) the assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved; (ix) transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation; (x) a mortgage or other transfer of an interest in real property or mobile home merely to secure a debt, or the assignment thereof; (xi) a transfer or conveyance made under an order of sale by the court in a mortgage or lien foreclosure proceeding or upon execution of a judgment; (xii) a deed in lieu of foreclosure to satisfy a mortgage; (xiii) a conveyance to the federal housing administration

or veteran's administration by an authorized mortgagee made under a contract of insurance or guarantee with the federal housing administration or veteran's administration; (xiv) a transfer in compliance with the terms of any lease or contract upon which notice has already been given under this chapter, or where the lease or contract was entered into before the effective date of this act; or (xv) a transfer to a corporation or partnership the majority interest of which is wholly owned by the transferor.

(3) A "qualified tenant organization" means a formal organization of tenants in the park in question, organized for the purpose of purchasing the park, with membership made available to all tenants with the only requirements for membership being: (a) Payment of reasonable dues; and (b) being a tenant in the park.

**NEW SECTION.** **Sec. 5.** If notice of a desire to purchase has been given under section 3 of this act, a park owner shall notify the qualified tenant organization that an agreement to purchase and sell has been reached and the terms of the agreement, including the availability and terms of seller financing, before closing a sale with any other person or entity. If, within thirty days after the actual notice has been received, the qualified tenant organization tenders to the park owner an amount equal to two percent of the agreed purchase price, refundable only according to this chapter, together with a fully executed purchase and sale agreement at least as favorable to the park owner as the original agreement, the mobile home park owner must sell the mobile home park to the qualified tenant organization. The tenant organization must then close the sale on the same terms as outlined in the original agreement between the park owner and the prospective purchaser. In the case of seller financing, a mobile home park owner may decline to sell the mobile home park to the qualified tenant organization if, based on reasonable and objective evidence, to do so would present a greater financial risk to the seller than would selling on the same terms to the original offeror.

If the qualified tenant organization fails to perform under the terms of the agreement the owner may proceed with the sale to any other party at these terms. If the park owner thereafter elects to accept an offer at a price lower than the price specified in the notice, the homeowners will have an additional ten days to meet the price and terms and conditions of this lower offer by executing a contract. If the qualified tenant organization fails to perform following two such opportunities, the park owner shall be free for a period of twenty-four months to execute a sale of the park to any other party.

A mobile home park owner who enters into a signed agreement to sell or transfer the ownership of the mobile home park to a relative or a legal entity composed of relatives or established for the benefit of relatives of the mobile home park owner, who signs an agreement stating the intention to maintain the property as a mobile home park is exempted from the requirements of this section and section 6 of this act.

NEW SECTION. **Sec. 6.** Failure on the part of a mobile home park owner to give notice as required by this chapter renders a sale of the mobile home park that occurs within thirty days of the time the qualified tenant organization knows or has reason to know that a violation of the notice provisions of section 3 of this act has occurred, voidable upon application to superior court after notice and hearing. If the court determines that the notice provisions of this chapter have been violated, the court shall issue an order setting aside the improper sale. In an action brought under this section, the court shall award the prevailing party attorneys' fees and costs. For the purposes of this section, a "prevailing party" includes any third party purchaser who appears and successfully defends his or her interest.

NEW SECTION. **Sec. 7.** If a mobile home park owner gives written notice to all tenants residing in the park, including new tenants at the commencement of their tenancy, that he or she has a desire to purchase their mobile homes, the mobile homes may be sold only according to the following provisions:

(1) Before transfer of title to any other person or entity, the mobile home owner shall notify the park owner if an agreement to purchase and sell has been reached and specify the terms of the agreement.

(2) If, within ten days of the notice, the mobile home park owner tenders to the mobile home owner an amount equal to five percent of the agreed purchase price, together with a fully executed purchase and sale agreement, the mobile home owner must sell the mobile home to the mobile home park owner.

(3) The mobile home park owner must then perform under the agreement and stand ready to close the sale according to the terms of the agreement between buyer and seller. Failure to perform under the terms of the agreement on the part of the mobile home park owner results in the forfeiture of the five percent deposit and voids the purchase and sale agreement.

(4) The rights of the mobile home park owner or of the mobile home owner under the purchase and sale agreement, including the deposit, are not forfeited if the transaction fails to close due to no fault or inability to perform on the part of the seller.

(5) In the case of seller financing, the mobile home owner may decline to sell to the mobile home park owner if, based on reasonable and objective evidence, to do so would present a greater financial risk to the seller than would selling to the original offeror.

A mobile home owner who enters into a signed agreement to sell or transfer the ownership of the mobile home to a relative is exempted from the requirements of this section and section 8 of this act.

NEW SECTION. **Sec. 8.** Failure on the part of a mobile home owner to give notice as required by this chapter renders a sale of the mobile home that occurs within sixty days of the time the mobile home park owner knows or has reason to know that a violation of the notice provisions of section 7 of this act has occurred, voidable upon application to superior court after notice and

hearing. If the court determines that the notice provisions of this chapter have been violated, the court shall issue an order setting aside the improper sale. In an action brought under this section, the court shall award the prevailing party attorneys' fees and costs. For the purposes of this section a "prevailing party" includes a third party purchaser who appears and successfully defends his or her interest.

**Sec. 9.** RCW 59.22.020 and 1991 c 327 s 2 are each amended to read as follows:

The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Account" means the mobile home affairs account created under RCW 59.22.070.

(2) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(3) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(4) "Department" means the department of community development.

(5) "Fee" means the mobile home title transfer fee (~~created~~) imposed under RCW (~~59.21.060~~) 59.22.080.

(6) "Fund" or "park purchase account" means the mobile home park purchase (~~fund~~) account created pursuant to RCW 59.22.030.

(7) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(8) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(9) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(10) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(11) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(4), or a manufactured home park subdivision as defined by RCW 59.20.030(6) created by the conversion to resident ownership of a mobile home park.

(12) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(13) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(14) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(15) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indication compliance with all applicable construction standards of the United States department of housing and urban development.

(16) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(17) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(18) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot.

**NEW SECTION. Sec. 10.** (1) The department may make loans from the fund to resident organizations for the purpose of financing mobile home park conversion costs. The department may only make loans to resident organizations of mobile home parks where a significant portion of the residents are low-income or infirm.

(2) The department may make loans from the fund to low-income residents of mobile home parks converted to resident ownership or which plan to convert to resident ownership. The purpose of providing loans under this subsection is to reduce the monthly housing costs for low-income residents to an affordable level. The department may establish flexible repayment terms for loans provided under this subsection if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund. Flexible repayment terms may include, but are not limited to, graduated payment schedules with negative amortization.



**NEW SECTION. Sec. 11.** (1) Any loans granted under section 10 of this act shall be for a term of no more than thirty years.

(2) The department shall establish the rate of interest to be paid on loans made from the fund.

(3) The department shall obtain security for loans made under this chapter. The security may be in the form of a note, deed of trust, assignment of lease, or other form of security on real or personal property which the department determines is adequate to protect the security of the fund and the interests of the state. To the extent applicable, the documents evidencing the security shall be recorded or referenced in a recorded document in the office of the county auditor of the county in which the mobile home park is located.

(4) The department may contract with private lenders, nonprofit organizations, or units of local government to provide program administration and to service loans made under this chapter.

**NEW SECTION. Sec. 12.** Before providing financing under this chapter, the department shall require:

(1) Verification that at least two-thirds of the households residing in the mobile home park support the plan for acquisition and conversion of the park;

(2) Verification that either no park residents will be involuntarily displaced as a result of the park conversion, or the impacts of displacement will be mitigated so as not to impose a hardship on the displaced resident;

(3) Projected costs and sources of funds for conversion activities;

(4) A projected operating budget for the park during and after conversion; and

(5) A management plan for the conversion and operation of the park.

**NEW SECTION. Sec. 13.** The department shall consider the following factors in determining the eligibility for, and the amount, of loans made under this chapter:

(1) The reasonableness of the conversion costs relating to repairs, rehabilitation, construction, or other costs;

(2) The number of available and affordable mobile home park spaces in the general area;

(3) The adequacy of the management plan for the conversion and operation of the park; and

(4) Other factors established by the department by rule.

**NEW SECTION. Sec. 14.** The department may provide technical assistance to resident organizations who wish to convert the mobile home park in which they reside to resident ownership. Technical assistance does not include details connected with the sale or conversion of a mobile home park which would require the department to act in a representative capacity, or the drafting of documents affecting legal or property rights of the parties by the department.

**Sec. 15.** RCW 59.20.030 and 1981 c 304 s 4 are each amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(3) "Mobile home lot" means a portion of a mobile home park designated as the location of one mobile home and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home;

(4) "Mobile home park" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(5) "Mobile home park cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(6) "Mobile home park subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(7) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(8) "Tenant" means any person, except a transient, who rents a mobile home lot; and

~~((8))~~ (9) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence.

**Sec. 16.** RCW 59.20.070 and 1987 c 253 s 1 are each amended to read as follows:

A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home within a park or require the removal of the mobile home from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural

improvements on a mobile home space: PROVIDED, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement. Door-to-door solicitation does not include public officials or candidates for public office meeting or distributing information to tenants in accordance with subsection (4) of this section;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, including political caucuses or forums for or speeches of public officials or candidates for public office, or meetings of organizations that represent the interest of tenants in the park, held in any of the park community or recreation halls if these halls are open for the use of the tenants, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Prohibit a public official or candidate for public office from meeting with or distributing information to tenants in their individual mobile homes, nor penalize any tenant for participating in these meetings or receiving this information;

(5) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

~~((5))~~ (6) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

~~((6))~~ (7) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

~~((7))~~ (8) Prevent the entry or require the removal of a mobile home for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home for any other reason provided such action conforms to chapter 59.20 RCW or any other statutory provision.

**Sec. 17.** RCW 59.20.073 and 1981 c 304 s 20 are each amended to read as follows:

(1) Any rental agreement shall be assignable by the tenant to any person to whom he sells or transfers title to the mobile home.

(2) A tenant who sells a mobile home within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home and mobile home lot.

(3) The landlord shall notify the selling tenant of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(5) Failure to notify the landlord (~~of the intended sale and transfer of the rental agreement~~) in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer.

NEW SECTION. Sec. 18. A new section is added to chapter 59.20 RCW to read as follows:

Rules are enforceable against a tenant only if:

(1) Their purpose is to promote the convenience, health, safety, or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally;

(2) They are reasonably related to the purpose for which they are adopted;

(3) They apply to all tenants in a fair manner;

(4) They are not for the purpose of evading an obligation of the landlord;  
and

(5) They are not retaliatory or discriminatory in nature.

Sec. 19. RCW 59.20.080 and 1989 c 201 s 12 are each amended to read as follows:

(1) (~~Except as provided in subsection (2) of this section, the~~) A landlord shall not terminate or fail to renew a tenancy, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: **PROVIDED**, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in

termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "~~((drug-related))~~ criminal activity." "~~((Drug-related))~~ Criminal activity" means ~~((that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW))~~ a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including chapter 59.20 RCW. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure

to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(i) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall be give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

~~(2) ((A landlord may terminate any tenancy without cause. Such termination shall be effective twelve months from the date the landlord serves notice of termination upon the tenant or at the end of the current tenancy, whichever is later. PROVIDED, That a landlord shall not terminate a tenancy for any reason or basis which is prohibited under RCW 59.20.070 (3) or (4) or is intended to circumvent the provisions of (1)(e) of this section.~~

~~(3)) Within five days of a notice of eviction as required by subsection (1)(a) ((or (2))) of this section, the landlord and tenant shall submit any dispute((; including the decision to terminate the tenancy without cause,)) to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section((, or for a period of thirty days for an eviction under subsection (2) of this section)). It is a defense to an eviction under subsection (1)(a) ((or (2))) of this section that a landlord did not participate in the mediation process in good faith.~~

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles from mobile home parks.

**Sec. 20.** RCW 59.20.130 and 1984 c 58 s 5 are each amended to read as follows:

It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair.

NEW SECTION. Sec. 21. (1) Sections 1 through 8 of this act shall constitute a new chapter in Title 59 RCW.

(2) Sections 10 through 14 of this act are each added to chapter 59.22 RCW.

Passed the Senate March 12, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

**CHAPTER 67**

[Senate Bill 5275]

**ABANDONED CEMETERIES—MAINTENANCE BY NONPROFIT CORPORATIONS**

**Effective Date: 7/25/93**

AN ACT Relating to abandoned cemeteries; and amending RCW 68.60.030.

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

**Sec. 1.** RCW 68.60.030 and 1990 c 92 s 3 are each amended to read as follows:

(1)(a) The archaeological and historical division of the department of community development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds pursuant to chapter 68.44 RCW, and shall report in accordance with chapter 68.44 RCW to the state cemetery board.



(2) Except as provided in subsection (1) of this section, the department of community development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of community development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner.

Passed the Senate March 4, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 19, 1993.

Filed in Office of Secretary of State April 19, 1993.

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## CHAPTER 68

[Substitute House Bill 1064]

### CORPORAL PUNISHMENT PROHIBITED IN COMMON SCHOOLS

Effective Date: 7/25/93

AN ACT Relating to corporal punishment; and adding a new section to chapter 28A.150 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.150 RCW to read as follows:

The use of corporal punishment in the common schools is prohibited. The state board of education, in consultation with the superintendent of public instruction, shall develop and adopt a policy prohibiting the use of corporal punishment in the common schools. The policy shall be adopted by the state board of education no later than February 1, 1994, and shall take effect in all school districts September 1, 1994.

Passed the House February 22, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 69

[House Bill 1476]

### DISCRIMINATION IN REAL ESTATE TRANSACTIONS PROHIBITION EXTENDED

Effective Date: 7/25/93

AN ACT Relating to meeting federal fair housing act requirements for housing equivalency; amending RCW 49.60.030, 49.60.120, 49.60.222, 49.60.223, 49.60.224, 49.60.225, 49.60.227, 49.60.230, 49.60.240, 49.60.250, 49.60.260, and 49.60.330; reenacting and amending RCW 49.60.040; adding new sections to chapter 49.60 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 49.60.030 and 1984 c 32 s 2 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical (~~handicap~~) disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained (~~by him~~), or both, together with the cost of suit including ((a)) reasonable ((~~attorney's~~) attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.); and

(3) Notwithstanding any other provisions of this chapter, any act prohibited by this chapter related to sex discrimination or discriminatory boycotts or blacklists which is committed in the course of trade or commerce in the state of Washington as defined in the Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair practice within the meaning of RCW 19.86.020 and 19.86.030 and subject to all the provisions of chapter 19.86 RCW as now or hereafter amended.

NEW SECTION. Sec. 2. A new section is added to chapter 49.60 RCW to read as follows:

(1) The superior courts of the state of Washington shall have jurisdiction upon petition of the commission, through the attorney general, to seek appropriate temporary or preliminary relief to enjoin any unfair practice in violation of RCW 49.60.222 through 49.60.225, from which prompt judicial action is necessary to carry out the purposes of this chapter.

(2) The commencement of a civil action under this section does not preclude the initiation or continuation of administrative proceedings under this chapter.

Sec. 3. RCW 49.60.040 and 1985 c 203 s 2 and 1985 c 185 s 2 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "National origin" includes "ancestry";

(8) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, or with any sensory, mental, or physical (~~handicap~~) disability, or a blind or deaf person using a trained dog guide, to be treated as not welcome, accepted, desired, or solicited;

(9) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(10) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(11) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services;

(12) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or

more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(13) "Sex" means gender((:));

(14) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

(15) "Complainant" means the person who files a complaint in a real estate transaction;

(16) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

(17) "Families with children status" means when one or more individuals who have not attained the age of eighteen years is domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody or guardianship of any individual who has not attained the age of eighteen years.

**Sec. 4.** RCW 49.60.120 and 1985 c 185 s 10 are each amended to read as follows:

The commission shall have the functions, powers and duties:

(1) To appoint an executive secretary and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, impartially investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate

discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical (~~handicap~~) disability.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities.

Sec. 5. RCW 49.60.222 and 1989 c 61 s 1 are each amended to read as follows:

(1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical (~~handicap~~) disability, or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person:

~~((1))~~ (a) To refuse to engage in a real estate transaction with a person;

~~((2))~~ (b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

~~((3))~~ (c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

~~((4))~~ (d) To refuse to negotiate for a real estate transaction with a person;

~~((5))~~ (e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit (~~him~~) the person to inspect real property;

~~((6))~~ (f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any person because of a disability of that person, or a person residing in or intending to reside in that dwelling after it is sold, rented, or made unavailable; or any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a

prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

~~((7))~~ (h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

~~((8))~~ (i) To expel a person from occupancy of real property;

~~((9))~~ (j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

~~((10))~~ (k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing dwelling occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct dwellings in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained guide dog or service dog. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

For purposes of this subsection (2), "dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by four or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(3) Notwithstanding any other provision of ~~(law)~~ this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private

educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or ~~((family))~~ families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a ~~((handicapped))~~ disabled person except as otherwise required by law. Nothing in this section affects the rights ~~((and)),~~ responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3). Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3).

**Sec. 6.** RCW 49.60.223 and 1979 c 127 s 9 are each amended to read as follows:

It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, families with children status, or with any sensory, mental, or physical ~~((handicap))~~ disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person.

**NEW SECTION. Sec. 7.** A new section is added to chapter 49.60 RCW to be codified between RCW 49.60.222 and 49.60.224 to read as follows:

It is an unlawful practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, rights regarding real estate transactions secured by RCW 49.60.030, 49.60.040, and 49.60.222 through 49.60.224.



**Sec. 8.** RCW 49.60.224 and 1979 c 127 s 10 are each amended to read as follows:

(1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, families with children status, or with any sensory, mental, or physical (~~handicap~~) disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, families with children status, or the presence of any sensory, mental, or physical (~~handicap~~) disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title.

**Sec. 9.** RCW 49.60.225 and 1985 c 185 s 19 are each amended to read as follows:

(1) When a reasonable cause determination has been made under RCW ~~((49.60.250))~~ 49.60.240 that an unfair practice ~~((involving real property))~~ in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the ~~((commission may, in addition to other relief authorized by RCW 49.60.250, award the complainant up to one thousand dollars))~~ administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by Title VIII of the United States civil rights act of 1964, as amended, and the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through ~~((49.60.226))~~ 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, families with children status, or the

presence of any sensory, mental, or physical (~~handicap~~) disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person. Enforcement of the order and appeal therefrom by the complainant or respondent (~~shall~~) may be made as provided in RCW 49.60.260 and 49.60.270. If acts constituting the unfair practice in a real estate transaction that is the object of the charge are determined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encumbrancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250.

**Sec. 10.** RCW 49.60.227 and 1987 c 56 s 2 are each amended to read as follows:

If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner, occupant, or tenant of the property which is subject to the provision may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner, occupant, or tenant of the property or any portion thereof.

If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property described in the complaint.

**Sec. 11.** RCW 49.60.230 and 1985 c 185 s 21 are each amended to read as follows:

(1) Who may file a complaint:

((1)) (a) Any person claiming to be aggrieved by an alleged unfair practice may, personally or by his or her attorney, make, sign, and file with the commission a complaint in writing under oath. The complaint shall state the name and address of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the commission.

~~((2))~~ (b) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the commission may issue a complaint.

~~((3))~~ (c) Any employer or principal whose employees, or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a written complaint under oath asking for assistance by conciliation or other remedial action.

(2) Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination except that complaints alleging an unfair practice in a real estate transaction pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one year after the alleged unfair practice in a real estate transaction has occurred or terminated.

Sec. 12. RCW 49.60.240 and 1985 c 185 s 22 are each amended to read as follows:

After the filing of any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be furnished to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation, and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of said agreement. No order shall be entered by the commission at this stage of the proceedings except upon such written agreement, except that during the period beginning with the filing of complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, and ending with the filing of a finding of reasonable cause or a dismissal by the commission, the commission staff shall, to the extent feasible, engage in conciliation with respect to such complaint. Any conciliation agreement arising out of conciliation efforts by the commission shall be an agreement between the respondent and the complainant and shall be subject to the approval of the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the complainant and the respondent.

**NEW SECTION. Sec. 13.** A new section is added to chapter 49.60 RCW to read as follows:

(1) Any complainant on whose behalf the reasonable cause finding was made, a respondent, or an aggrieved person may, with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, elect to have the claims on which reasonable cause was found decided in a civil action under RCW 49.60.030(2) in lieu of a hearing under RCW 49.60.250. This election must be made not later than twenty days after the service of the reasonable cause finding. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates. Any reasonable cause finding issued by the commission pursuant to the procedures contained in this chapter shall become final twenty days after service of the reasonable cause finding unless a written notice of election is received by the commission within the twenty-day period.

(2) If an election is made under subsection (1) of this section, the commission shall authorize not later than thirty days after the election is made, and the attorney general shall commence, a civil action on behalf of the aggrieved person in a superior court of the state of Washington seeking relief under this section.

(3) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right in that civil action.

(4) In a civil action under this section, if the court finds that an unfair practice in a real estate transaction has occurred or is about to occur, the court may grant any relief that a court could grant with respect to such an unfair practice in a real estate transaction in a civil action under RCW 49.60.030(2). If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(5) In any administrative proceeding under this section where the respondent is the prevailing party, a complainant who intervenes by filing a notice of independent appearance may be liable for reasonable attorneys' fees and costs only to the extent that the intervening participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(6) In any administrative proceeding brought under RCW 49.60.225 or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court in its discretion may allow the prevailing party, other than the commission, reasonable attorneys' fees and costs.

**Sec. 14.** RCW 49.60.250 and 1992 c 118 s 5 are each amended to read as follows:

(1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed one thousand dollars, and including a requirement for report of the matter on compliance. Relief available for violations of RCW 49.60.222 through 49.60.224 shall be limited to the relief specified in RCW 49.60.225.

(6) If a determination is made that retaliatory action, as defined in RCW 42.40.050, has been taken against a whistleblower, as defined in RCW 42.40.020, the administrative law judge may, in addition to any other remedy, impose a civil penalty upon the retaliator of up to three thousand dollars and issue an order to

the state employer to suspend the retaliator for up to thirty days without pay. At a minimum, the administrative law judge shall require that a letter of reprimand be placed in the retaliator's personnel file. All penalties recovered shall be paid into the state treasury and credited to the general fund.

(7) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(8) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(9) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

(10) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure.

**Sec. 15.** RCW 49.60.260 and 1989 c 175 s 116 are each amended to read as follows:

(1) The commission (~~shall~~) may petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission shall cause a notice of the petition to be sent by certified mail to all parties or their representatives.

(2) If within sixty days after the date the administrative law judge's order concerning an unfair practice in a real estate transaction is entered, no petition has been filed under subsection (1) of this section and the commission has not sought enforcement of the final order under this section, any person entitled to relief under the final order may petition for a decree enforcing the order in the superior courts of the state of Washington for the county in which the unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.224 is alleged to have occurred.

(3) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

~~((3))~~ (4) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the

administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission or any person entitled to relief of any final order shall immediately serve the ((person)) noncomplying party with a copy of the court order and the petition.

((4)) (5) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and

(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW 34.05.510 through 34.05.598, and the person has given no valid excuse for failing to use that remedy.

((5)) (6) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases.

**Sec. 16.** RCW 49.60.330 and 1983 c 5 s 2 are each amended to read as follows:

Any county or any city classified as a first class city under RCW 35.01.010 with over one hundred twenty five thousand population may enact resolutions or ordinances consistent with this chapter to provide administrative and/or judicial remedies for any form of discrimination proscribed by this chapter(~~(= PROVIDED, That)~~). The imposition of such administrative remedies shall be subject to judicial review. The superior courts shall have jurisdiction to hear all matters relating to violation and enforcement of such resolutions or ordinances, including petitions for preliminary relief, the award of such remedies and civil penalties as are consistent with this chapter, and enforcement of any order of a county or city administrative law judge or hearing examiner pursuant to such resolution or ordinance. Any local resolution or ordinance not inconsistent with this chapter may provide, after a finding of reasonable cause to believe that discrimination has occurred, for the filing of an action in, or the removal of the matter to, the superior court.

**NEW SECTION. Sec. 17.** 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 March 10, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 70

[House Bill 1184]

### LESS THAN COUNTY-WIDE PORT DISTRICT—EXTENSION OF AUTHORITY TO CREATE

Effective Date: 7/25/93

AN ACT Relating to formation of less than county-wide port districts; and amending RCW 53.04.023.

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

**Sec. 1.** RCW 53.04.023 and 1992 c 147 s 2 are each amended to read as follows:

A less than county-wide port district with an assessed valuation of at least seventy-five million dollars may be created in a county (~~(bordering on saltwater)~~) that already has a less than county-wide port district located within its boundaries. Except as provided in this section, such a port district shall be created in accordance with the procedure to create a county-wide port district.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election.

A public hearing on creation of the proposed port district shall be held by the county legislative authority if the county auditor certifies that the petition contained sufficient valid signatures. Notice of the public hearing must be published in the county's official newspaper at least ten days prior to the date of the public hearing. After taking testimony, the county legislative authority may make changes in the boundaries of the proposed port district if it finds that such changes are in the public interest and shall determine if the creation of the port district is in the public interest. No area may be added to the boundaries unless a subsequent public hearing is held on the proposed port district.

The county legislative authority shall submit a ballot proposition authorizing the creation of the proposed port district to the voters of the proposed port district, at any special election date provided in RCW 29.13.020, if it finds the creation of the port district to be in the public interest.

The port district shall be created if a majority of the voters voting on the ballot proposition favor the creation of the port district. The initial port commissioners shall be elected at the same election (~~(as provided in RCW~~



~~53.12.050~~)), but the election of commissioners shall be null and void if the port district is not created. Commissioner districts shall not be used in the initial election of the port commissioners.

This section shall expire July 1, 1997.

Passed the House February 17, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 71

[Substitute House Bill 1017]

### SCHOOL EMPLOYMENT PROHIBITED FOR PERSONS CONVICTED OF FELONY SEXUAL OFFENSE AGAINST A CHILD

Effective Date: 7/25/93

AN ACT Relating to public employment; amending RCW 9.96A.020; and creating a new section.

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

**Sec. 1.** RCW 9.96A.020 and 1973 c 135 s 2 are each amended to read as follows:

~~((Notwithstanding any other provisions))~~ (1) Subject to the exceptions in subsections (3) and (4) of this section, and unless there is another provision of law to the contrary, a person ((shall)) is not ((be)) disqualified from employment by the state of Washington or any of its ((agencies or political subdivisions)) counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor ((shall)) is a person ((be)) disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its ((agencies or political subdivisions)) counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony((: PROVIDED:)). ~~However, this section ((shall)) does not preclude the fact of any prior conviction of a crime from being considered.~~

~~((However,))~~ (2) A person may be denied employment by the state of Washington or any of its ((agencies or political subdivisions)) counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the

conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) Subsections (3) and (4) of this section only apply to a person applying for a certificate or for employment on or after the effective date of this act.

**NEW SECTION. Sec. 2.** The legislature reaffirms its singular intent that this act shall not affect the duties imposed or powers conferred on the office of the superintendent of public instruction by RCW 28A.410.090.

Passed the House February 22, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 72

[House Bill 1062]

### INTERNATIONAL MARKETING PROGRAM FOR AGRICULTURAL COMMODITIES AND TRADE

**Effective Date:** 7/25/93

AN ACT Relating to the repeal of the sunset provisions for the international marketing program for agricultural commodities and trade; and repealing RCW 43.131.329 and 43.131.330.

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

**NEW SECTION. Sec. 1.** The following acts or parts of acts are each repealed:

(1) RCW 43.131.329 and 1992 c 95 s 1, 1988 c 288 s 11, & 1985 c 39 s 8;  
and

(2) RCW 43.131.330 and 1992 c 95 s 2, 1988 c 288 s 12, & 1985 c 39 s 9.

Passed the House February 5, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

**CHAPTER 73**

[House Bill 1075]

**INTERNAL REVENUE CODE REFERENCES UPDATED IN PROBATE  
AND ESTATE TAX STATUTES****Effective Date: 7/25/93**

AN ACT Relating to references to the Internal Revenue Code; amending RCW 11.02.005, 11.108.010, 11.108.020, 11.108.025, 11.108.050, 11.110.200, 11.110.210, 11.110.220, 83.100.020, 83.110.010, and 83.110.050; and repealing RCW 11.110.240.

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

**Sec. 1.** RCW 11.02.005 and 1985 c 30 s 4 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the intestate's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020 and includes all codicils.

(9) "Codicil" means an instrument that is validly executed in the manner provided by this title for a will and that refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on the effective date of this act.

(16) Words that import the singular number may also be applied to the plural of persons and things.

~~((16))~~ (17) Words importing the masculine gender only may be extended to females also.

**Sec. 2.** RCW 11.108.010 and 1990 c 224 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) The term "marital deduction" means the federal estate tax deduction allowed for transfers to spouses under ~~((section 2056 of))~~ the Internal Revenue Code.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction.

(5) The term "governing instrument" includes a will and codicils, irrevocable, and revocable trusts.

(6) "Fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) ~~((References to the "internal revenue code" are to the United States internal revenue code of 1986, as in effect on June 7, 1990.~~

(8)) The term "gift" refers to all legacies, devises, and bequests made in a governing instrument.

**Sec. 3.** RCW 11.108.020 and 1988 c 64 s 28 are each amended to read as follows:

If a governing instrument contains a marital deduction gift, the governing instrument, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the marital deduction provisions of the Internal Revenue Code ~~((and the regulations thereunder))~~ in order to conform to that intent. Whether the governing instrument contains a marital deduction gift depends upon the intent of the testator, grantor, or other transferor at the time the governing instrument is executed. If the testator, grantor, or other transferor has adequately evidenced an intention to make a marital deduction gift, the fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the election under section 2056(b)(7) of the Internal Revenue Code that is referred to in RCW 11.108.025.

**Sec. 4.** RCW 11.108.025 and 1991 c 6 s 1 are each amended to read as follows:

Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) of the Internal Revenue Code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the Internal Revenue Code.

(2) The fiduciary making an election under section 2056(b)(7) or 2056A of the Internal Revenue Code or making an allocation under section 2632 of the Internal Revenue Code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) The fiduciary of a trust, if an election is made under section 2056(b)(7) or 2056A of the Internal Revenue Code, if an allocation is made under section 2632 of the Internal Revenue Code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, provided that the terms of the separate trusts which result are substantially identical to the terms of the trust before division,

and provided further, in the case of a trust otherwise qualifying for the marital deduction under the Internal Revenue Code (~~and its regulations~~), that the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction.

**Sec. 5.** RCW 11.108.050 and 1990 c 179 s 3 are each amended to read as follows:

(1) If a governing instrument indicates the testator's intention to make a marital deduction gift in trust, in addition to the other provisions of this section, each of the following also applies to the trust; provided, however, that such provisions shall not apply to any trust which provides for the entire then remaining trust estate to be paid on the termination of the income interest to the estate of the spouse of the trust's creator, or to a charitable beneficiary, contributions to which are tax deductible for federal income tax purposes:

(a) The only income beneficiary of a marital deduction trust is the testator's surviving spouse;

(b) The income beneficiary is entitled to all of the trust income until the trust terminates;

(c) The trust income is payable to the income beneficiary not less frequently than annually; and

(d) Except in the case of a marital deduction gift in trust, described in subsection (2) of this section, or property that has or would otherwise have qualified for the marital deduction only as the result of an election under section 2056(b)(7) of the Internal Revenue Code, upon termination of the trust, all of the remaining trust assets, including accrued or undistributed income, pass either to the income beneficiary or under the exercise of a general power of appointment granted to the income beneficiary in favor of the income beneficiary's estate or to any other person or entity in trust or outright. The general power of appointment is exercisable by the income beneficiary alone and in all events.

(2) If a governing instrument indicates the testator's intention to make a marital deduction gift in trust and the surviving spouse is not a citizen of the United States, subsection (1)(a), (b), and (c) of this section and each of the following shall apply to the trust:

(a) At least one trustee of the trust shall be an individual citizen of the United States or ~~((e)f) a domestic corporation~~ ~~(~~However, any distribution from the trust must be approved by this trustee~~), and no distribution, other than a distribution of income, may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed under section 2056A of the Internal Revenue Code on the distribution;~~

(b) The trust shall meet such requirements as the secretary of the treasury of the United States may by regulations prescribe to ensure collection of estate tax, under section 2056A(b) of the Internal Revenue Code; and

(c) (a) and (b) of this subsection shall no longer apply to the trust if the surviving spouse becomes a citizen of the United States and (i) the surviving

spouse is a resident of the United States at all times after the testator's death and before becoming a citizen, or (ii) no tax has been imposed on the trust under section 2056A(b)(1)(A) of the Internal Revenue Code before the surviving spouse becomes a citizen, or (iii) the surviving spouse makes an election under section 2056A(b)(12)(C) of the Internal Revenue Code regarding tax imposed on distributions from the trust before becoming a citizen.

(3) The exercise of the general power of appointment provided in this section shall be done only by the income beneficiary in the manner provided by RCW 11.95.060 (~~by specifically referring to this section~~).

**Sec. 6.** RCW 11.110.200 and 1985 c 30 s 129 are each amended to read as follows:

RCW 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code (~~(of 1954)~~), "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code (~~(of 1954)~~), or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code (~~(of 1954)~~). With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971.

**Sec. 7.** RCW 11.110.210 and 1985 c 30 s 130 are each amended to read as follows:

The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing<sub>1</sub>" (~~(of)~~) as defined in section 4941(d) of the Internal Revenue Code (~~(of 1954)~~), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code (~~(of 1954)~~);

(2) Retaining any "excess business holdings<sub>1</sub>" (~~(of)~~) as defined in section 4943(c) of the Internal Revenue Code (~~(of 1954)~~), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code (~~(of 1954)~~);

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code (~~(of 1954)~~), so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code (~~(of 1954)~~); and

(4) Making any "taxable expenditures<sub>1</sub>" (~~(of)~~) as defined in section 4945(d) of the Internal Revenue Code (~~(of 1954)~~), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code (~~(of 1954)~~);

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code (~~(of 1954)~~).

**Sec. 8.** RCW 11.110.220 and 1985 c 30 s 131 are each amended to read as follows:

The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code (~~(of 1954)~~).

**Sec. 9.** RCW 83.100.020 and 1990 c 224 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Decedent" means a deceased individual;

(2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(3) "Federal credit" means (a) for a transfer, the maximum amount of the credit for state taxes allowed by section 2011 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered)~~); and (b) for a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered)~~);

(4) "Federal return" means any tax return required by chapter 11 or 13 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered, and any regulations thereunder)~~);

(5) "Federal tax" means (a) for a transfer, a tax under chapter 11 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered)~~); and (b) for a generation-skipping transfer, the tax under chapter 13 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered)~~);

(6) "Generation-skipping transfer" means a "generation-skipping transfer" as defined and used in section 2611 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered)~~);

(7) "Gross estate" means "gross estate" as defined and used in section 2031 of the (~~United States~~) Internal Revenue Code (~~(of 1986, as amended or renumbered)~~);

(8) "Nonresident" means a decedent who was domiciled outside Washington at his death;

(9) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(10) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code (~~(of 1986, as amended or renumbered)~~), such as the personal representative of an



estate; or a transferor, trustee, or beneficiary of a generation-skipping transfer; or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the ~~((United States))~~ Internal Revenue Code ~~((of 1986, as amended or renumbered))~~;

(11) "Property" means (a) for a transfer, property included in the gross estate; and (b) for a generation-skipping transfer, all real and personal property subject to the federal tax;

(12) "Resident" means a decedent who was domiciled in Washington at time of death;

(13) "Transfer" means "transfer" as used in section 2001 of the ~~((United States))~~ Internal Revenue Code ~~((of 1986, as amended or renumbered))~~, or a disposition or cessation of qualified use as defined and used in section 2032A(c) of the ~~((United States))~~ Internal Revenue Code ~~((of 1986, as amended or renumbered))~~; ~~((and))~~

(14) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code ~~((of 1986, as amended or renumbered))~~; and

(15) ~~((References in this chapter to the United States internal revenue code of 1986, to a chapter of the code, and to regulations under the code are to the code, chapters, and regulations in effect on June 7, 1990))~~ "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on the effective date of this act.

**Sec. 10.** RCW 83.110.010 and 1989 c 40 s 1 are each amended to read as follows:

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

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "Excise tax" means the federal excise tax imposed by section 4980A(d)~~((, or such section as renumbered,))~~ of the Internal Revenue Code, ~~((which was enacted by section 1133(a) of the tax reform act of 1986, P.L. 99-514 or as subsequently amended,))~~ and interest and penalties imposed in addition to the excise tax;

(3) "Fiduciary" means executor, administrator of any description, and trustee;

(4) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered ~~((from time to time))~~ on the effective date of this act;

(5) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(6) "Persons interested in retirement distributions" means any person determined as of the date the excise tax is due, including a personal representative, guardian, trustee, or beneficiary, entitled to receive, or who has received, by reason of or following the death of a decedent, any property or interest

therein which constitutes a retirement distribution as defined in section 4980A(e)~~((, or such section as renumbered,))~~ of the Internal Revenue Code, but this definition excludes any alternate payee under a qualified domestic relations order as such terms are defined in section 414(p) of the Internal Revenue Code;

(7) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

(8) "Qualified heir" means a person interested in the estate who is entitled to receive, or who has received, an interest in qualified real property;

(9) "Qualified real property" means real property for which the election described in section 2032A of the Internal Revenue Code has been made;

(10) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(11) "Tax" means the federal estate tax, the excise tax defined in subsection (2) of this section, and the estate tax payable to this state and interest and penalties imposed in addition to the tax.

**Sec. 11.** RCW 83.110.050 and 1989 c 40 s 4 are each amended to read as follows:

(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that or in proportion that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chapter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result under section 2053(d) of the Internal Revenue Code ~~((of 1954 of the United States))~~ relates to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) In the case of qualified real property, the apportionment of the tax shall be based on the values that would have been used to determine the tax without regard to section 2032A of the Internal Revenue Code. The reduction in the tax attributable to the application of section 2032A shall inure as follows:

(a) First to the benefit of the qualified heirs in proportion to their relative interests in the qualified real property, until the tax attributable to the qualified real property is reduced to zero;

(b) Then to the qualified heirs in proportion to their relative interests in other property of the estate, until the tax attributable to the property is reduced to zero; and

(c) Then to other persons interested in the estate in proportion to their relative interests in other property of the estate.

(7) Any extension in the payment of a part of the tax under any provision of the Internal Revenue Code shall inure to the benefit of, and the tax subject to the extension shall be equitably apportioned among, the persons receiving the property relating to the extension. Any tax benefit derived from the interest paid with respect to the tax shall be equitably apportioned among the persons receiving the property.

NEW SECTION. Sec. 12. RCW 11.110.240 and 1985 c 30 s 133 are each repealed.

Passed the House February 15, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 74

[Substitute House Bill 1119]

### STATE PUBLICATIONS—RESTRICTIONS ON ADVERTISING IN

Effective Date: 7/1/93

AN ACT Relating to advertising in state publications; adding a new section to chapter 40.07 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 40.07 RCW to read as follows:

A state agency may not accept advertising for placement in a state publication unless the advertiser: (1) Has obtained a certificate of registration from the department of revenue under chapter 82.32 RCW; and (2) if the advertiser is not otherwise obligated to collect and remit Washington retail sales tax or use tax, the advertiser either (a) agrees to voluntarily collect and remit the Washington use tax upon all sales to Washington consumers, or (b) agrees to provide to the department of revenue, no less frequently than quarterly, a listing

of the names and addresses of Washington customers to whom sales were made. This section does not apply to advertising that does not offer items for sale or to advertising that does not solicit orders for sales.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House February 24, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 75

[House Bill 1143]

### COMMUNITY MUNICIPAL CORPORATION CREATION—REVISED AUTHORITY AND PROCEDURE

Effective Date: 7/25/93

AN ACT Relating to community councils in cities and towns; amending RCW 35.14.010; adding a new section to chapter 35.10 RCW; and adding a new section to chapter 35A.14 RCW.

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

**Sec. 1.** RCW 35.14.010 and 1985 c 281 s 24 are each amended to read as follows:

Whenever unincorporated territory is annexed by a city or town pursuant to the provisions of chapter 35.13 RCW, or whenever unincorporated territory is annexed to a code city pursuant to the provisions of chapter 35A.14 RCW, community municipal corporations may be organized (~~in the manner provided for in this 1967 amendatory act~~) for the territory comprised of all or a part of an unincorporated area annexed to a city or town pursuant to chapter 35.13 or 35A.14 RCW, if: (1) The service area is such as would be eligible for incorporation as a city or town; or (2) the service area has a minimum population of not less than three hundred inhabitants and ten percent of the population of the annexing city or town; or (3) the service area has a minimum population of not less than one thousand inhabitants.

Whenever two or more cities are consolidated pursuant to the provisions of chapter 35.10 RCW, a community municipal corporation may be organized within one or more of the consolidating cities.

No territory shall be included in the service area of more than one community municipal corporation. Whenever a new community municipal corporation is formed embracing all of the territory of an existing community municipal corporation, the prior existing community municipal corporation shall be deemed to be dissolved on the effective date of the new corporation.

**NEW SECTION. Sec. 2.** A new section is added to chapter 35.10 RCW to read as follows:

Voters of one or more of the cities that are proposed to be consolidated may have a ballot proposition submitted to them authorizing the simultaneous creation of a community municipal corporation and election of community council members as provided for under chapter 35.14 RCW. The joint resolution that initiates a consolidation under RCW 35.10.410 may provide for the question of whether a community municipal corporation shall be created to be submitted to the voters of one or more of the cities that are proposed to be consolidated as a separate ballot measure from the ballot measure authorizing the consolidation or as part of the same ballot measure authorizing the consolidation. The petitions that are signed by the voters of each of the cities that are proposed to be consolidated under RCW 35.10.420 may provide for the question of whether to create a community municipal corporation to be submitted to the voters of that city as a separate ballot measure from the ballot measure authorizing the consolidation or as part of the same ballot measure authorizing the consolidation.

The ballots shall contain the words "For consolidation and creation of community municipal corporation" and "Against consolidation and creation of community municipal corporation," or "For creation of community municipal corporation" and "Against creation of community municipal corporation," as the case may be. Approval of either optional ballot proposition shall be by simple majority vote of the voters voting on the proposition, but the consolidation must be authorized by the voters of each city proposed to be consolidated before a community municipal corporation is created.

**NEW SECTION. Sec. 3.** A new section is added to chapter 35A.14 RCW to read as follows:

The resolution initiating the annexation of territory under RCW 35A.14.015, and the petition initiating the annexation of territory under RCW 35A.14.020, may provide for the simultaneous creation of a community municipal corporation and election of community council members as provided for in chapter 35.14 RCW, as separate ballot measures or as part of the same ballot measure authorizing the annexation, or for the simultaneous inclusion of the annexed area into a named existing community municipal corporation operating under chapter 35.14 RCW, as separate ballot measures or as part of the same ballot measure authorizing the annexation. If the petition so provides for the creation of a community municipal corporation and election of community council members, the petition shall describe the boundaries of the proposed service area, state the number of voters residing therein as nearly as may be, and pray for the election of community council members by the voters residing in the service area.

The ballots shall contain the words "For annexation and creation of community municipal corporation" and "Against annexation and creation of community municipal corporation," or "For creation of community municipal corporation" and "Against creation of community municipal corporation," as the case may be. Approval of either optional ballot proposition shall be by simple

majority vote of the voters voting on the proposition, but the annexation must be authorized before a community municipal corporation is created.

Passed the House March 1, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 76

[Engrossed House Bill 1152]

### BAR ASSOCIATION—DESIGNATION AS PUBLIC EMPLOYER AUTHORIZED

Effective Date: 7/25/93

AN ACT Relating to public employees' collective bargaining; amending RCW 41.56.020; and creating a new section.

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

**NEW SECTION.** Sec. 1. The legislature is committed to providing collective bargaining for all employees. However, the legislature is also mindful of the separations of powers and responsibilities among the branches of government. Therefore, the legislature strongly encourages the state supreme court to adopt collective bargaining for the employees of the Washington state bar association.

Sec. 2. RCW 41.56.020 and 1992 c 36 s 1 are each amended to read as follows:

This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington, including district courts and superior courts, except as otherwise provided by RCW 54.04.170, 54.04.180, and chapters 41.59, 47.64, and 53.18 RCW. The Washington state patrol shall be considered a public employer of state patrol officers appointed under RCW 43.43.020. The Washington state supreme court may provide by rule that the Washington state bar association shall be considered a public employer of its employees.

Passed the House March 17, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 77

[House Bill 1174]

## INDIAN CULTURE AND LANGUAGE INSTRUCTION

Effective Date: 7/25/93

AN ACT Relating to higher education; and amending RCW 28B.10.710 and 28B.80.350.

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

**Sec. 1.** RCW 28B.10.710 and 1969 ex.s. c 223 s 28B.10.710 are each amended to read as follows:

There shall be a one quarter or semester course in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teachers' colleges and teachers' courses in all institutions of higher education. No person shall be graduated from any of said schools without completing said course of study, unless otherwise determined by the state board of education. Any course in Washington state or Pacific Northwest history and government used to fulfill this requirement shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

**Sec. 2.** RCW 28B.80.350 and 1992 c 60 s 3 are each amended to read as follows:

The board shall coordinate educational activities among all segments of higher education taking into account the educational programs, facilities, and other resources of both public and independent two and four-year colleges and universities. The four-year institutions and the state board for community and technical colleges (~~education~~) shall coordinate information and activities with the board. The board shall have the following additional responsibilities:

- (1) Promote interinstitutional cooperation;
- (2) Establish minimum admission standards for four-year institutions, including a requirement that coursework in American sign language or an American Indian language shall satisfy any (~~foreign language~~) requirement for instruction in a language other than English that the board or the institutions may establish as a general undergraduate admissions requirement;
- (3) Establish transfer policies;
- (4) Adopt rules implementing statutory residency requirements;
- (5) Develop and administer reciprocity agreements with bordering states and the province of British Columbia;
- (6) Review and recommend compensation practices and levels for administrative employees, exempt under chapter 28B.16 RCW, and faculty using comparative data from peer institutions;
- (7) Monitor higher education activities for compliance with all relevant state policies for higher education;
- (8) Arbitrate disputes between and among four-year institutions or between and among four-year institutions and community colleges at the request of one or more of the institutions involved, or at the request of the governor, or from

a resolution adopted by the legislature. The decision of the board shall be binding on the participants in the dispute;

(9) Establish and implement a state system for collecting, analyzing, and distributing information;

(10) Recommend to the governor and the legislature ways to remove any economic incentives to use off-campus program funds for on-campus activities; and

(11) Make recommendations to increase minority participation, and monitor and report on the progress of minority participation in higher education.

Passed the House March 1, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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**CHAPTER 78**

[Substitute House Bill 1266]

**VETERINARY MEDICATION CLERKS**

**Effective Date: 7/25/93**

AN ACT Relating to veterinary medicine; amending RCW 18.92.015, 18.92.030, 18.92.060, 18.92.125, 18.92.140, and 18.92.145; and adding a new section to chapter 18.92 RCW.

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

**Sec. 1.** RCW 18.92.015 and 1991 c 332 s 40 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Animal technician" means a person who has successfully completed an examination administered by the board and who has either successfully completed a post high school course approved by the board in the care and treatment of animals or had five years' practical experience, acceptable to the board, with a licensed veterinarian.

"Board" means the Washington state veterinary board of governors.

"Department" means the department of health.

"Secretary" means the secretary of the department of health.

"Veterinary medication clerk" means a person who has satisfactorily completed a board-approved training program developed in consultation with the board of pharmacy and designed to prepare persons to perform certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.92 RCW to read as follows:



(1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk or a registered animal technician, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or registered animal technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, registered animal technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the board of pharmacy investigators.

(2) For the purposes of this section:

(a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and

(b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task.

**Sec. 3.** RCW 18.92.030 and 1986 c 259 s 140 are each amended to read as follows:

~~((It shall be the duty of))~~ The board ~~((to))~~ shall prepare examination questions, conduct examinations, and grade the answers of applicants. The board, ~~((pursuant to))~~ under chapter 34.05 RCW, ~~((shall have the power to))~~ may adopt ~~((such))~~ rules ~~((and regulations as may be))~~ necessary to ~~((effectuate))~~ carry out the purposes of this chapter, including the performance of the duties and responsibilities of animal technicians ~~((: PROVIDED, HOWEVER, That such))~~ and veterinary medication clerks. The rules ~~((are))~~ shall be adopted in the interest of good veterinary health care delivery to the consuming public ~~((;))~~ and ~~((do))~~ shall not prevent animal technicians from inoculating an animal. The board ~~((shall further have))~~ also has the power to adopt ~~((;))~~ by ~~((reasonable))~~ rule ~~((s and regulations;))~~ standards prescribing requirements for veterinary medical facilities and ~~((to fix))~~ fixing minimum standards of continuing veterinary medical education.

The department ~~((shall be))~~ is the official office of record.

**Sec. 4.** RCW 18.92.060 and 1974 ex.s. c 44 s 4 are each amended to read as follows:

Nothing in this chapter ~~((shall be construed to apply))~~ applies to:

(1) Commissioned veterinarians in the United States military services ~~((;))~~ or veterinarians employed by Washington state and federal agencies while performing official duties;

(2) A person ~~((s))~~ practicing veterinary medicine upon ~~((a person's))~~ his or her own animal ~~((s))~~;

(3) A person advising with respect to or performing the castrating and dehorning of cattle, castrating and docking of sheep, castrating of swine ~~((or))~~, caponizing of poultry, or artificial insemination of animals;

(4)(a) A person who is a regularly enrolled student in a veterinary school~~((;))~~ or ~~((regularly enrolled in a))~~ training course approved under ~~((the provisions of))~~ RCW 18.92.015 and ~~((while))~~ performing duties or actions assigned by his or her instructors~~((;))~~ or working under the direct supervision of a licensed veterinarian during a school vacation period or (b) a person performing assigned duties under the supervision of a veterinarian within the established framework of an internship program recognized by the board;

(5) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this state;

(6) An animal technician or veterinary medication clerk acting under the supervision and control of a licensed veterinarian~~((: PROVIDED, HOWEVER, That))~~. The practice of an animal technician or veterinary medication clerk is limited to the performance of ~~((those))~~ services which are authorized by the board;

(7) An owner being assisted in ~~((such))~~ practice by his or her employees when employed in the conduct of ~~((such person's))~~ the owner's business;

(8) An owner being assisted in ~~((such))~~ practice by some other person gratuitously.

**Sec. 5.** RCW 18.92.125 and 1986 c 259 s 143 are each amended to read as follows:

No veterinarian who uses the services of an animal technician or veterinary medication clerk shall be considered as aiding and abetting any unlicensed person to practice veterinary medicine. A veterinarian ~~((shall))~~ retains professional and personal responsibility for any act which constitutes the practice of veterinary medicine as defined in this chapter when performed by an animal technician or veterinary medication clerk in his or her employ.

**Sec. 6.** RCW 18.92.140 and 1991 c 3 s 247 are each amended to read as follows:

Each person now qualified to practice veterinary medicine, surgery, and dentistry ~~((or))~~, registered as an animal technician, or registered as a veterinary medication clerk in this state or who ~~((shall hereafter be))~~ becomes licensed or registered to engage in ~~((such))~~ practice~~((;))~~ shall register with the secretary of health annually or on the date prescribed by the secretary and pay the renewal registration fee set by the secretary as provided in RCW 43.70.250. A person who fails to renew a license or certificate ~~((prior to))~~ before its expiration ~~((shall be))~~ is subject to a late renewal fee equal to one-third of the regular renewal fee set by the secretary.

**Sec. 7.** RCW 18.92.145 and 1991 c 332 s 42 are each amended to read as follows:

The secretary shall determine the fees, as provided in RCW 43.70.250, for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

(3) For a certificate of registration as an animal technician;

(4) For a certificate of registration as a veterinary medication clerk;

(5) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee; and

~~((5))~~ (6) For a license to practice specialized veterinary medicine.

Passed the House February 17, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 79

[House Bill 1324]

### PROPERTY TAX EXEMPTION FOR NONPROFIT CHARITABLE ORGANIZATIONS

Effective Date: 7/25/93

AN ACT Relating to property tax exemptions for organizations distributing funds for character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages; amending RCW 84.36.800 and 84.36.810; reenacting and amending RCW 84.36.805; adding a new section to chapter 84.36 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 84.36 RCW to read as follows:

The real and personal property owned by nonprofit organizations and used for solicitation or collection of gifts, donations, or grants is exempt from taxation if the organization meets all of the following conditions:

(1) The organization is organized and conducted for nonsectarian purposes.

(2) The organization is affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fund-raising organizations.

(3) The organization is qualified for exemption under section 501(c)(3) of the federal internal revenue code.

(4) The organization is governed by a volunteer board of directors.

(5) The gifts, donations, and grants are used by the organization for character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages, or for distribution under subsection (6) of this section.

(6) The organization distributes gifts, donations, or grants to at least five other nonprofit organizations or associations that are organized and conducted for nonsectarian purposes and provide character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

**Sec. 2.** RCW 84.36.800 and 1989 c 379 s 3 are each amended to read as follows:

As used in RCW 84.36.020, 84.36.030, section 1 of this act, 84.36.037, 84.36.040, 84.36.041, 84.36.050, 84.36.060, and 84.36.800 through 84.36.865:

(1) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed;

(2) "Convent" means a house or set of buildings occupied by a community of clergymen or nuns devoted to religious life under a superior;

(3) "Hospital" means any portion of a hospital building, or other buildings in connection therewith, used as a residence for persons engaged or employed in the operation of a hospital, or operated as a portion of the hospital unit;

(4) "Nonprofit" means an organization, association or corporation no part of the income of which is paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state;

(5) "Parsonage" means a residence occupied by a clergyman who is designated for a particular congregation and who holds regular services therefor.

**Sec. 3.** RCW 84.36.805 and 1990 c 283 ss 3 and 7 are each reenacted and amended to read as follows:

In order to be exempt pursuant to RCW 84.36.030, section 1 of this act, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption: PROVIDED, That the property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.040, 84.36.041, or 84.36.043 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480.

**Sec. 4.** RCW 84.36.810 and 1990 c 283 s 4 are each amended to read as follows:

(1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, section 1 of this act, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.050, and 84.36.060, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes: PROVIDED, That where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040, 84.36.041, 84.36.043, or 84.36.060;

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(2), as long as some portion of the home remains exempt;

(h) The conversion of a full exemption of a home for the aging to a partial exemption or taxable status under RCW 84.36.041(7).

**NEW SECTION. Sec. 5.** This act shall be effective for taxes levied for collection in 1994 and thereafter.

Passed the House March 9, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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**CHAPTER 80**

[House Bill 1347]

**LLAMAS AND ALPACAS—DISEASE CONTROL AUTHORITY OF  
DIRECTOR OF AGRICULTURE EXTENDED TO**

**Effective Date: 7/25/93**

AN ACT Relating to camelids; amending RCW 15.65.020 and 15.66.010; adding a new section to chapter 16.36 RCW; and adding a new section to chapter 77.12 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 16.36 RCW to read as follows:

The authority of the director of agriculture to prevent, control, and suppress in this state diseases in llamas and alpacas shall be the same as the director's authority to take such actions under this chapter with regard to any other domestic animal, including but not limited to livestock.

**Sec. 2.** RCW 15.65.020 and 1986 c 203 s 15 are each amended to read as follows:

The following terms are hereby defined:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative. The phrase "director or his designee" means the director unless, in the provisions of any marketing agreement or order, he has designated an administrator, board or other designee to act for him in the matter designated, in which case "director or his designee" means for such order or agreement the administrator, board or other person(s) so designated and not the director.

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

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(5) "Agricultural commodity" means llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(7) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(8) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are

produced by producers or handled by handlers who have assented to such agreement.

(9) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer of an affected commodity. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself.

(13) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(14) "Member of a cooperative association" means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(15) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.



(16) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent man engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent man engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case the director may in his discretion: (a) determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he finds to be similarly situated.

(17) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(18) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(19) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(20) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter.

(21) "Person" as used in this chapter shall mean any person, firm, association or corporation.

**Sec. 3.** RCW 15.66.010 and 1986 c 203 s 16 are each amended to read as follows:

For the purposes of this chapter:

(1) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him concerning some matter under this chapter.

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

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Agricultural commodity" means llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. For the purposes of RCW 15.66.060, 15.66.090, and 15.66.120, as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Affected producer" means any producer of an affected commodity.

(7) "Affected commodity" means any agricultural commodity for which the director has established a list of producers pursuant to RCW 15.66.060.

(8) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(11) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(12) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(13) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

**NEW SECTION.** Sec. 4. A new section is added to chapter 77.12 RCW to read as follows:

The authority of the department of wildlife does not extend to preventing, controlling, or suppressing diseases in llamas or alpacas or to controlling the movement or sale of llamas or alpacas.

This section shall not be construed as granting or denying authority to the department of wildlife to prevent, control, or suppress diseases in any animals other than llamas and alpacas.

Passed the House March 10, 1993.

Passed the Senate March 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 81

[Substitute House Bill 1452]

### ADOPTION INFORMATION DISCLOSURE

Effective Date: 7/25/93

AN ACT Relating to adoption; and amending RCW 26.33.020, 26.33.340, 26.33.345, and 26.33.380.

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

**Sec. 1.** RCW 26.33.020 and 1990 c 146 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alleged father" means a person whose parent-child relationship has not been terminated, who is not a presumed father under chapter 26.26 RCW, and who alleges himself or whom a party alleges to be the father of the child. It includes a person whose marriage to the mother was terminated more than three hundred days before the birth of the child or who was separated from the mother more than three hundred days before the birth of the child.

(2) "Child" means a person under eighteen years of age.

(3) "Adoptee" means a person who is to be adopted or who has been adopted.

(4) "Adoptive parent" means the person or persons who seek to adopt or have adopted an adoptee.

(5) "Court" means the superior court.

(6) "Department" means the department of social and health services.

(7) "Agency" means any public or private association, corporation, or individual licensed or certified by the department as a child placing agency under chapter 74.15 RCW or as an adoption agency.

(8) "Parent" means the natural or adoptive mother or father of a child, including a presumed father under chapter 26.26 RCW. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

(9) "Legal guardian" means the department, an agency, or a person, other than a parent or stepparent, appointed by the court to promote the child's general welfare, with the authority and duty to make decisions affecting the child's development.

(10) "Guardian ad litem" means a person, not related to a party to the action, appointed by the court to represent the best interests of a party who is under a legal disability.

(11) "Relinquish or relinquishment" means the voluntary surrender of custody of a child to the department, an agency, or prospective adoptive parents.

(12) "Individual approved by the court" or "qualified salaried court employee" means a person who has a master's degree in social work or a related field and one year of experience in social work, or a bachelor's degree and two years of experience in social work, and includes a person not having such qualifications only if the court makes specific findings of fact that are entered of record establishing that the person has reasonably equivalent experience.

(13) "Birth parent" means the biological mother or biological or alleged father of a child, including a presumed father under chapter 26.26 RCW, whether or not any such person's parent-child relationship has been terminated by a court of competent jurisdiction. "Birth parent" does not include a biological mother or biological or alleged father, including a presumed father under chapter 26.26 RCW, if the parent-child relationship was terminated because of an act for which the person was found guilty under chapter 9A.42 or 9A.44 RCW.

(14) "Nonidentifying information" includes, but is not limited to, the following information about the birth parents, adoptive parents, and adoptee:

(a) Age in years at the time of adoption;

(b) Heritage, including nationality, ethnic background, and race;

(c) Education, including number of years of school completed at the time of adoption, but not name or location of school;

(d) General physical appearance, including height, weight, color of hair, eyes, and skin, or other information of a similar nature;

(e) Religion;

(f) Occupation, but not specific titles or places of employment;

(g) Talents, hobbies, and special interests;

(h) Circumstances leading to the adoption;

(i) Medical and genetic history of birth parents;

(j) First names;

- (k) Other children of birth parents by age, sex, and medical history;
- (l) Extended family of birth parents by age, sex, and medical history;
- (m) The fact of the death, and age and cause, if known;
- (n) Photographs;
- (o) Name of agency or individual that facilitated the adoption.

Sec. 2. RCW 26.33.340 and 1990 c 145 s 4 are each amended to read as follows:

Department ~~((and))~~, agency, and court files regarding an adoption shall be confidential except ~~((the department or agency may disclose))~~ that reasonably available nonidentifying information may be disclosed upon the ~~((receipt of a verified))~~ written request for the information from the adoptive parent, the adoptee, or the ~~((natural))~~ birth parent. If the adoption facilitator refuses to disclose nonidentifying information, the individual may petition the superior court. Identifying information may also be disclosed through the procedure described in RCW 26.33.343.

Sec. 3. RCW 26.33.345 and 1990 c 145 s 2 are each amended to read as follows:

(1) The department of social and health services, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of ~~((vital records))~~ health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3) For adoptions finalized after October 1, 1993, the department of health shall make available a noncertified copy of the original birth certificate to the adoptee after the adoptee's eighteenth birthday unless the birth parent has filed an affidavit of nondisclosure.

Sec. 4. RCW 26.33.380 and 1989 c 281 s 2 are each amended to read as follows:

Every person, firm, society, association, or corporation receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption, a family background and child and family social history report, which includes a chronological history of the circumstances surrounding the adoptive placement and any available psychiatric reports, psychological reports, court reports pertaining to dependency or custody, or school reports. Such reports or information shall not reveal the identity of the ~~((natural))~~ birth parents of the child but shall contain reasonably available nonidentifying information.

Passed the House March 15, 1993.  
Passed the Senate April 6, 1993.  
Approved by the Governor April 21, 1993.  
Filed in Office of Secretary of State April 21, 1993.

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**CHAPTER 82**

[Engrossed House Bill 1484]

**WILDLIFE VIOLATOR COMPACT**

**Effective Date: 7/25/93**

AN ACT Relating to the wildlife violator compact; adding a new section to chapter 77.21 RCW; adding a new section to chapter 75.10 RCW; adding a new chapter to Title 77 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The wildlife violator compact is hereby established in the form substantially as follows, and the Washington state department of wildlife is authorized to enter into such compact on behalf of the state with all other jurisdictions legally joining therein:

**ARTICLE I**

**FINDINGS, DECLARATION OF POLICY, AND PURPOSE**

(a) The party states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance, or administrative rule relating to the management of those resources.

(3) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

(i) Must post collateral or bond to secure appearance for a trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to ensure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

## ARTICLE II DEFINITIONS

Unless the context requires otherwise, the definitions in this article apply through this compact and are intended only for the implementation of this compact:

(a) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the party state which issues a wildlife citation to the violator.

(h) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(i) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Party state" means any state which enacts legislation to become a member of this wildlife compact.



(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(l) "State" means any state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(m) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(q) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

### ARTICLE III

#### PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to

comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV

PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE V

RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

ARTICLE VI

APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII

COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The

board shall be composed of one representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the party states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

## ARTICLE VIII

### ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the state is empowered to become a party to this compact;

(ii) Agreement to comply with the terms and provisions of the compact; and

(iii) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than sixty days after notice has been given by the chairperson of the board of compact administrators or by the secretariat of the board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

#### ARTICLE IX AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairperson within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

#### ARTICLE X CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

#### ARTICLE XI TITLE

This compact shall be known as the wildlife violator compact.

NEW SECTION. Sec. 2. For purposes of Article VII of section 1 of this act, the term "licensing authority," with reference to this state, means the department of wildlife. The director of the department of wildlife is authorized to appoint a compact administrator.

NEW SECTION. Sec. 3. The director of the department of wildlife shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the compact.

**NEW SECTION.** Sec. 4. The provisions of this compact shall also apply to individuals whose licenses under Title 77 RCW are currently in revoked status.

**NEW SECTION.** Sec. 5. A new section is added to chapter 77.21 RCW to read as follows:

(1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of a state that is a party to the wildlife violator compact under section 1 of this act, the department shall suspend the violator's license privileges under this title until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the department. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of licensing privileges.

(2) Upon receipt of a report of a conviction from the licensing authority of a state that is a party to the wildlife violator compact under section 1 of this act, the department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of license privileges.

**NEW SECTION.** Sec. 6. A new section is added to chapter 75.10 RCW to read as follows:

(1) The department of wildlife shall notify the department upon receipt of a report of failure to comply with the terms of a citation issued for a recreational violation from the licensing authority of a state that is a party to the wildlife violator compact under section 1 of this act. The department shall suspend the violator's recreational license privileges under this title until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the department of wildlife. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of recreational licensing privileges.

(2) The department of wildlife shall notify the department upon receipt of a report of a conviction for a recreational offense from the licensing authority of a state that is a party to the wildlife violator compact under section 1 of this act. The department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of recreational license privileges.

**NEW SECTION.** Sec. 7. Sections 1 through 3 of this act shall constitute a new chapter in Title 77 RCW.

Passed the House March 8, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

CHAPTER 83

[Substitute House Bill 1544]

CRIMINAL PENALTIES ESTABLISHED BY CITIES, TOWNS, AND COUNTIES TO BE UNIFORM WITH STATE LAW

Effective Date: 7/1/94

AN ACT Relating to uniform criminal penalties; amending RCW 35.20.030, 35.22.280, 35.23.440, 35.24.290, 35.27.370, 35A.11.020, and 36.32.120; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.01 RCW; repealing RCW 35.24.230 and 35.27.320; and providing an effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 35.21 RCW to read as follows:

Except as limited by the maximum penalty authorized by law, no city, code city, or town, may establish a penalty for an act that constitutes a crime under state law that is different from the penalty prescribed for that crime by state statute.

NEW SECTION. **Sec. 2.** A new section is added to chapter 36.01 RCW to read as follows:

Except as limited by the maximum penalty authorized by law, no county may establish a penalty for an act that constitutes a crime under state law that is different from the penalty prescribed for that crime by state statute.

**Sec. 3.** RCW 35.20.030 and 1984 c 258 s 801 are each amended to read as follows:

The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: **PROVIDED**, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail not to exceed one year, or both such fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: **PROVIDED**, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts.

**Sec. 4.** RCW 35.22.280 and 1990 c 189 s 3 are each amended to read as follows:

Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets"



are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce,

including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same: PROVIDED, That no license shall be granted to continue for longer than one year from the date thereof;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for one year, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto.

**Sec. 5.** RCW 35.23.440 and 1986 c 278 s 4 are each amended to read as follows:

The city council of each second class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tipling houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified: PROVIDED, That on any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gaming and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) **Fast driving:** To regulate or prohibit fast driving or riding in any portion of the city.

(19) **Combustibles:** To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) **Property:** To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) **Fire department:** To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) **Water supply:** To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) **Overflow of water:** To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) **House numbers:** To provide for the numbering of houses.

(25) **Health board:** To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.

(26) **Harbors and wharves:** To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) **License of steamers:** To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) **Ferry licenses:** To license ferries and toll bridges under the law regulating the granting of such license.

(29) **Penalty for violation of ordinances:** To provide that violations of ordinances with the punishment for any offense not exceeding a fine of five thousand dollars or imprisonment for more than one year, or both fine and imprisonment, but the punishment for any criminal ordinance shall be the same

as the punishment provided in state law for the same crime. Alternatively, such a city may provide that a violation of an ordinance constitutes a civil violation subject to monetary penalties or to determine and impose fines for forfeitures and penalties ((that shall be incurred for the breach or violation of any city ordinance, notwithstanding that the act constituting a violation of any such ordinance may also be punishable under the state laws, and also for a violation of the provisions of this chapter, when no penalty is affixed thereto or provided by law, and to appropriate all such fines, penalties, and forfeitures for the benefit of the city; but no penalty to be enforced shall exceed for any offense the amount of five thousand dollars or imprisonment for one year, or both; and every violation of any lawful order, regulation, or ordinance of the city council of such city is hereby declared a misdemeanor or public offense, and all prosecutions for the same may be in the name of the state of Washington: PROVIDED, That)), but no act which is a state crime may be made a civil violation. A violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

(31) Elections: To provide for conducting elections and establishing election precincts when necessary, to be as near as may be in conformity with the state law.

(32) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

(33) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

(34) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

(35) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

(36) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

(37) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

(38) Franchises: To permit the use of the streets for railroad or other public service purposes.

(39) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

(40) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his duties, and may prescribe his term of office, and the fees he shall receive for his services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

(41) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

(42) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

(43) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

(44) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

(45) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

(46) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses

provided for by this title, as the interests of the city may from time to time require.

(47) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

(48) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

(49) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

(50) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

(51) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

(52) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

(53) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

(54) To provide for the general welfare.



**Sec. 6.** RCW 35.24.290 and 1986 c 278 s 5 are each amended to read as follows:

The city council of each third class city shall have power:

(1) To pass ordinances not in conflict with the Constitution and laws of this state or of the United States;

(2) To prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof and to cause the impounding and sale of any such animals;

(3) To establish, build and repair bridges, to establish, lay out, alter, keep open, open, widen, vacate, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish and reestablish the grades thereof; to grade, plank, pave, macadamize, gravel and curb the same, in whole or in part; to construct gutters, culverts, sidewalks and crosswalks therein or upon any part thereof; to cultivate and maintain parking strips therein, and generally to manage and control all such highways and places; to provide by local assessment for the leveling up and surfacing and oiling or otherwise treating for the laying of dust, all streets within the city limits;

(4) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets and alleys or within two hundred feet thereof along which sewers shall have been constructed to make proper connections therewith and to use the same for proper purposes, and in case the owners of the property on such streets and alleys or within two hundred feet thereof fail to make such connections within the time fixed by such council, it may cause such connections to be made and assess against the property served thereby the costs and expenses thereof;

(5) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(6) To impose and collect an annual license on every dog within the limits of the city, to prohibit dogs running at large and to provide for the killing of all dogs not duly licensed found at large;

(7) To license, for the purposes of regulation and revenue, all and every kind of business authorized by law, and transacted and carried on in such city, and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof, to fix the rate of license tax upon the same, and to provide for the collection of the same by suit or otherwise;

(8) To improve rivers and streams flowing through such city, or adjoining the same; to widen, straighten and deepen the channel thereof, and remove obstructions therefrom; to improve the water-front of the city, and to construct and maintain embankments and other works to protect such city from overflow; to prevent the filling of the water of any bay, except such filling over tide or shorelands as may be provided for by order of the city council; to purify and prevent the pollution of streams of water, lakes or other sources of supply, and

for this purpose shall have jurisdiction over all streams, lakes or other sources of supply, both within and without the city limits. Such city shall have power to provide by ordinance and to enforce such punishment or penalty as the city council may deem proper for the offense of polluting or in any manner obstructing or interfering with the water supply of such city or source thereof;

(9) To erect and maintain buildings for municipal purposes;

(10) To permit, under such restrictions as it may deem proper, and to grant franchises for, the laying of railroad tracks, and the running of cars propelled by electric, steam or other power thereon, and the laying of gas and water pipes and steam mains and conduits for underground wires, and to permit the construction of tunnels or subways in the public streets, and to construct and maintain and to permit the construction and maintenance of telegraph, telephone and electric lines therein;

(11) In its discretion to divide the city by ordinance, into a convenient number of wards, not exceeding six, to fix the boundaries thereof, and to change the same from time to time: PROVIDED, That no change in the boundaries of any ward shall be made within sixty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmen to be elected from each ward, apportioning the same in proportion to the population of the wards. Thereafter the councilmen so designated shall be elected by the qualified electors resident in such ward, or by general vote of the whole city as may be designated in such ordinance. When additional territory is added to the city it may by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous division. The removal of a councilman from the ward for which he was elected shall create a vacancy in such office;

(12) To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed five thousand dollars nor the term of such imprisonment exceed the term of one year, except that the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime; or to provide that violations of ordinances constitute a civil violation subject to monetary penalty, but no act that is a state crime may be made a civil violation;

(13) To establish fire limits, with proper regulations;

(14) To establish and maintain a free public library;

(15) To establish and regulate public markets and market places;

(16) To punish the keepers and inmates and lessors of houses of ill fame, gamblers and keepers of gambling tables, patrons thereof or those found loitering about such houses and places;

(17) To make all such ordinances, bylaws, rules, regulations and resolutions, not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the corporation and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter, and to enact and enforce within the limits of such city all other local, police, sanitary and other regulations as do not conflict with general laws;

(18) To license steamers, boats and vessels used in any bay or other watercourse in the city and to fix and collect such license; to provide for the regulation of berths, landings, and stations, and for the removing of steamboats, sail boats, sail vessels, rafts, barges and other watercraft; to provide for the removal of obstructions to navigation and of structures dangerous to navigation or to other property, in or adjoining the waterfront, except in municipalities in counties in which there is a city of the first class.

**Sec. 7.** RCW 35.27.370 and 1986 c 278 s 6 are each amended to read as follows:

The council of said town shall have power:

(1) To pass ordinances not in conflict with the Constitution and laws of this state, or of the United States;

(2) To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the town; to acquire, own, and hold real estate for cemetery purposes either within or without the corporate limits, to sell and dispose of such real estate, to plat or replat such real estate into cemetery lots and to sell and dispose of any and all lots therein, and to operate, improve and maintain the same as a cemetery;

(3) To contract for supplying the town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for use of such town or its inhabitants, or for irrigating purposes therein;

(4) To establish, build and repair bridges, to establish, lay out, alter, widen, extend, keep open, improve, and repair streets, sidewalks, alleys, squares and other public highways and places within the town, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, plank, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and crosswalks therein, or on any part thereof; to cause to be planted, set out and cultivated trees therein, and generally to manage and control all such highways and places;

(5) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets along which sewers are constructed to make proper connections therewith, and to use the same for proper purposes when such property is improved by the erection thereon of a building

or buildings; and in case the owners of such improved property on such streets shall fail to make such connections within the time fixed by such council, they may cause such connections to be made, and to assess against the property in front of which such connections are made the costs and expenses thereof;

(6) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(7) To impose and collect an annual license on every dog within the limits of the town, to prohibit dogs running at large, and to provide for the killing of all dogs found at large and not duly licensed;

(8) To levy and collect annually a property tax, for the payment of current expenses and for the payment of indebtedness (if any indebtedness exists) within the limits authorized by law;

(9) To license, for purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town; and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof; to fix the rate of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; to regulate, restrain, or prohibit the running at large of any and all domestic animals within the city limits, or any part or parts thereof, and to regulate the keeping of such animals within any part of the city; to establish, maintain and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed on, and collected from, the owners of any impounded stock;

(10) To improve the rivers and streams flowing through such town or adjoining the same; to widen, straighten and deepen the channels thereof, and to remove obstructions therefrom; to prevent the pollution of streams or water running through such town, and for this purpose shall have jurisdiction for two miles in either direction; to improve the waterfront of the town, and to construct and maintain embankments and other works to protect such town from overflow;

(11) To erect and maintain buildings for municipal purposes;

(12) To grant franchises or permits to use and occupy the surface, the overhead and the underground of streets, alleys and other public ways, under such terms and conditions as it shall deem fit, for any and all purposes, including but not being limited to the construction, maintenance and operation of railroads, street railways, transportation systems, water, gas and steam systems, telephone and telegraph systems, electric lines, signal systems, surface, aerial and underground tramways;

(13) To punish the keepers and inmates and lessors of houses of ill fame, and keepers and lessors of gambling houses and rooms and other places where gambling is carried on or permitted, gamblers and keepers of gambling tables;

(14) To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed five thousand

dollars, nor the term of imprisonment exceed one year, except that the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime; or to provide that violations of ordinances constitute a civil violation subject to a monetary penalty, but no act which is a state crime may be made a civil violation;

(15) To operate ambulance service which may serve the town and surrounding rural areas and, in the discretion of the council, to make a charge for such service;

(16) To make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the town and its trade, commerce and manufacturers, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter.

**Sec. 8.** RCW 35A.11.020 and 1986 c 278 s 7 are each amended to read as follows:

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firemen and policemen which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firemen and chapter 41.12 RCW for policemen now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firemen or policemen which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically

denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

**Sec. 9.** RCW 36.32.120 and 1989 c 378 s 39 are each amended to read as follows:

The legislative authorities of the several counties shall:

(1) Provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county;

(2) Lay out, discontinue, or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within cities and towns which have jurisdiction over the roads within their limits;

(3) License and fix the rates of ferriage; grant grocery and other licenses authorized by law to be by them granted at fees set by the legislative authorities which shall not exceed the costs of administration and operation of such licensed activities;

(4) Fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law: PROVIDED, That the legislative authority of a county may permit all moneys, assessments, and taxes belonging to or collected for the use of the state or any county, including any amounts representing estimates for future assessments and taxes, to be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: PROVIDED FURTHER, That the taxpayer, with the concurrence of the county legislative authority, may designate the particular fund against which such prepayment of future tax or assessment shall be credited;

(5) Allow all accounts legally chargeable against the county not otherwise provided for, and audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated to its benefit;

(6) Have the care of the county property and the management of the county funds and business and in the name of the county prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law;

(7) Make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law, and within the unincorporated area of the county may adopt by reference Washington state statutes and recognized codes and/or compilations printed in book form relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health, or other subjects, and may adopt such codes and/or compilations or portions thereof, together with amendments thereto, or additions thereto: PROVIDED, That except for Washington state statutes, there shall be filed in the county auditor's office one copy of such codes and compilations ten days prior to their adoption by reference, and additional copies may also be filed in library or city offices within the county as deemed necessary by the county legislative authority: PROVIDED FURTHER, That no such regulation, code, compilation, and/or statute shall be effective unless before its adoption, a public hearing has been held thereon by the county legislative authority of which at least ten days' notice has been given. Any violation of such regulations, ordinances, codes, compilations, and/or statutes or resolutions shall constitute a misdemeanor or a civil violation subject to a monetary penalty: PROVIDED FURTHER, That violation of a regulation, ordinance, code, compilation, and/or statute relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a regulation, ordinance, code, compilation, and/or statute equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime and no act that is a state crime may be made a civil violation. The notice must set out a copy of the proposed regulations or summarize the content of each proposed regulation; or if a code is adopted by reference the notice shall set forth the full official title and a statement describing the general purpose of such code. For purposes of this subsection, a summary shall mean a brief description which succinctly describes the main points of the proposed regulation. When the county publishes a summary, the publication shall include a statement that the full text of the proposed regulation will be mailed upon request. An inadvertent mistake or omission in publishing the text or a summary of the content of a proposed regulation shall not render the regulation invalid if it is adopted. The notice shall also include the day, hour,

and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed;

(8) Have power to compound and release in whole or in part any debt due to the county when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or any of them are personally interested;

(9) Have power to administer oaths or affirmations necessary in the discharge of their duties and commit for contempt any witness refusing to testify before them with the same power as district judges.

NEW SECTION. **Sec. 10.** The following acts or parts of acts are each repealed:

- (1) RCW 35.24.230 and 1965 c 7 s 35.24.230; and
- (2) RCW 35.27.320 and 1965 c 7 s 35.27.320.

NEW SECTION. **Sec. 11.** This act shall take effect July 1, 1994.

Passed the House March 11, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

**CHAPTER 84**

[Substitute House Bill 1978]

**PUBLIC LIBRARIES—AUTHORITY TO LOCATE ON PARK OR RECREATION LAND**

**Effective Date:** 7/25/93

AN ACT Relating to the use of county park and recreation facilities; and adding a new section to chapter 36.68 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 36.68 RCW to read as follows:

A county, acting through its county legislative authority, is authorized to permit the location of public libraries on land owned by the county that is used for park and recreation purposes, unless a covenant or other binding restriction precludes such uses.

Passed the House March 15, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.



**CHAPTER 85**

[Engrossed House Bill 2061]

**HUNTER EDUCATION REQUIREMENTS REVISED****Effective Date:** 7/25/93

AN ACT Relating to hunter education; and amending RCW 77.32.155.

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

**Sec. 1.** RCW 77.32.155 and 1987 c 506 s 81 are each amended to read as follows:

When purchasing a hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ~~((six))~~ ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. Beginning January 1, 1995, all persons purchasing a hunting license for the first time, if born after January 1, 1972, shall present such certification.

The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations.

The director shall prescribe the type of instruction and the qualifications of the instructors.

Upon successful completion of the course, a trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

Passed the House March 13, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

**CHAPTER 86**

[Substitute House Bill 1973]

**EARLY RETIREMENT ELIGIBILITY FOR PERSONS****SUBMITTING LATE APPLICATIONS****Effective Date:** 4/21/93

AN ACT Relating to retirement eligibility for plan I members of the teachers' and public employees' retirement systems who submitted late applications for early retirement; amending RCW 43.01.170 and 28A.400.212; amending 1992 c 234 s 6 (uncodified); amending 1992 c 234 s 8 (uncodified); creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** (1) Any member of the teachers' retirement system plan I who meets the criteria in subsection (2) of this section may retire

by submitting a written application by July 1, 1993, to the director of the department of retirement systems on the form required by the department.

(2) This section applies only to members who:

(a) Were otherwise eligible to retire under the terms and conditions of section 3, chapter 234, Laws of 1992; and

(b) Submitted a written application to retire on the form required by the department not later than August 31, 1992; but

(c) Were denied retirement eligibility because the department of retirement systems received the application after the June 15, 1992, deadline.

(3) A retirement under this section shall take effect:

(a) September 1, 1992, for members who separated from service on or before that date and who did not subsequently render membership service to an employer; or

(b) The first day of the month following the member's separation from service, but no later than September 1, 1993, for members who separate from service after September 1, 1992. However, if a full year of membership service was established for the 1992-93 school year, the effective date of a retirement under this subsection (3)(b) shall be July 1, 1993.

NEW SECTION. Sec. 2. Section 1 of this act is added to chapter 41.32 RCW, but because of its temporary nature, shall not be codified.

NEW SECTION. Sec. 3. (1) Any member of the public employees' retirement system plan I who meets the criteria in subsection (2) of this section may retire by submitting a written application by July 1, 1993, to the director of the department of retirement systems on the form required by the department.

(2) This section applies only to members who:

(a) Were otherwise eligible to retire under the terms and conditions of section 1, chapter 234, Laws of 1992; and

(b) Submitted a written application to retire on the form required by the department not later than August 31, 1992; but

(c) Were denied retirement eligibility because the department of retirement systems received the application after the June 15, 1992, deadline.

(3) A retirement under this section shall take effect:

(a) September 1, 1992, for members who separated from service on or before that date and who were not subsequently employed in an eligible position; or

(b) The first day of the month following the member's separation from service, but no later than September 1, 1993, for members who separate from service after September 1, 1992.

NEW SECTION. Sec. 4. Section 3 of this act is added to chapter 41.40 RCW, but because of its temporary nature, shall not be codified.

Sec. 5. 1992 c 234 s 6 (uncodified) is amended to read as follows:

In order to ensure that the state derives the expected benefits from the early retirement provisions of chapter 234, Laws of 1992 and chapter . . . , Laws of

1993 (this act), no state agency may engage through personal service contracts persons who retire from state service under the provisions of chapter 234, Laws of 1992 and chapter . . . , Laws of 1993 (this act). Exceptions to this section may be granted by written approval from the director of the office of financial management if the director finds that the proposed contract is necessary to protect the public safety, protect against the loss of federal certification or loss of critical federal funds, or carry out functions so essential to the agency that even temporary suspension or delay of services would have a significant negative impact on the public. At the end of each three-month period in which exceptions are approved, the director shall forward a copy of any approvals, together with justification for the exceptions, to the fiscal committees of the legislature. Each forwarded approval shall include the name of the proposed contractor, the agency and division or department requesting the contract, duration and cost of the proposed contract, and specific functions and duties to be carried out under the contract. This section shall expire June 30, 1995.

**Sec. 6.** 1992 c 234 s 8 (uncodified) is amended to read as follows:

In order to ensure that the state derives the expected benefits from the early retirement provisions of chapter 234, Laws of 1992 and chapter . . . , Laws of 1993 (this act), no board of directors of a school district or educational service district may engage through personal service contracts persons who retire from ((state)) service under the provisions of chapter 234, Laws of 1992 and chapter . . . , Laws of 1993 (this act). Exceptions to this section may be granted by written approval from the superintendent of public instruction if the superintendent finds that the proposed contract is necessary to protect student safety, protect against the loss of school district certification or loss of federal funds, or carry out functions so essential to the district that even temporary suspension or delay of services would have a significant negative impact on students. At the end of each three-month period in which exceptions are approved, the superintendent shall forward a copy of any approvals, together with justification for the exceptions, to the office of financial management and the fiscal committees of the legislature. Each forwarded approval shall include the name of the proposed contractor, the district requesting the contract, duration and cost of the proposed contract, and specific functions and duties to be carried out under the contract. This section shall expire August 31, 1995.

**Sec. 7.** RCW 43.01.170 and 1992 c 234 s 11 are each amended to read as follows:

In order to ensure that the state derives the expected benefits from the early retirement provisions of chapter 234, Laws of 1992, and chapter . . . , Laws of 1993 (this act), no state agency may hire persons who retire from state service under the provisions of chapter 234, Laws of 1992, and chapter . . . , Laws of 1993 (this act), as temporary or project employees, as defined by the state personnel board for employees covered under chapter 41.06 RCW ((and)), by the higher education personnel board for employees covered under chapter 28B.16

RCW, and by the employer for persons not covered under chapter 28B.16 RCW who are employed by institutions of higher education or community or technical colleges. Exceptions to this section may be granted by written approval from the director of the office of financial management if the director finds that the temporary or project employment of a retiree is necessary to protect the public safety, protect against the loss of federal certification or loss of critical federal funds, or carry out functions so essential to the agency that even temporary suspension or delay of services would have a significant negative impact on the public. At the end of each three-month period in which exceptions are approved, the director shall forward a copy of any approvals, together with justification for the exceptions, to the fiscal committees of the legislature. Each forwarded approval shall include the name of the temporary or project employee, the agency and division or department requesting the employment, duration and cost of the proposed employment, and specific functions and duties to be carried out during the employment. This section shall expire June 30, 1995.

**Sec. 8.** RCW 28A.400.212 and 1992 c 234 s 13 are each amended to read as follows:

An employee of a school district that has established an attendance incentive program under RCW 28A.400.210 who retires under section 1 or 3, chapter 234, Laws of 1992, or section 1 or 3, chapter . . . , Laws of 1993 (this act), shall receive, at the time of his or her separation from school district employment, not less than one-half of the remuneration for accrued leave for illness or injury payable to him or her under the district's incentive program. The school district board of directors may, at its discretion, pay the remainder of such an employee's remuneration for accrued leave for illness or injury after the time of the employee's separation from school district employment, but the employee or the employee's estate is entitled to receive the remainder of the remuneration no later than the date the employee would have been eligible to retire under the provisions of RCW 41.40.180 or 41.32.480 had the employee continued to work for the district until eligible to retire, or three years following the date of the employee's separation from school district employment, whichever occurs first. A district exercising its discretion under this section to pay the remainder of the remuneration after the time of the employee's separation from school district employment shall establish a policy and procedure for paying the remaining remuneration that applies to all affected employees equally and without discrimination. Any remuneration paid shall be based on the number of days of leave the employee had accrued and the compensation the employee received at the time he or she retired under section 1 or 3, chapter 234, Laws of 1992, or section 1 or 3, chapter . . . , Laws of 1993 (this act).

**NEW SECTION.** **Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 11, 1993.  
Passed the Senate April 7, 1993.  
Approved by the Governor April 21, 1993.  
Filed in Office of Secretary of State April 21, 1993.

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**CHAPTER 87**

[House Bill 1943]

**EXCEPTIONAL FACULTY AWARDS—COMMUNITY AND TECHNICAL COLLEGE  
FOUNDATIONS AUTHORIZED TO MANAGE****Effective Date: 7/25/93**

AN ACT Relating to higher education; amending RCW 28B.50.837 and 28B.50.839; and adding new sections to chapter 28B.50 RCW.

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

**Sec. 1.** RCW 28B.50.837 and 1991 sp.s. c 13 ss 108, 109 are each amended to read as follows:

(1) The Washington community and technical college exceptional faculty awards program is established. The program shall be administered by the college board. The college faculty awards trust fund hereby created shall be administered by the state treasurer.

(2) Funds appropriated by the legislature for the community and technical college exceptional faculty awards program shall be deposited in the college faculty awards trust fund. At the request of the college board, the treasurer shall release the state matching funds to the (~~designated institution's~~) local endowment fund of the college or its foundation. No appropriation is necessary for the expenditure of moneys from the fund.

**Sec. 2.** RCW 28B.50.839 and 1991 c 238 s 64 are each amended to read as follows:

(1) In consultation with eligible community and technical colleges, the college board shall set priorities and guidelines for the program.

(2) Under this section, a college shall not receive more than four faculty grants in twenty-five thousand dollar increments, with a maximum total of one hundred thousand dollars per campus in any biennium.

(3) All community and technical colleges and foundations shall be eligible for matching trust funds. Institutions and foundations may apply to the college board for grants from the fund in twenty-five thousand dollar increments up to a maximum of one hundred thousand dollars when they can match the state funds with equal cash donations from private sources, except that in the initial year of the program, no college or foundation may receive more than one grant until every college or its foundation has received one grant. These donations shall be made specifically to the exceptional faculty awards program and deposited by the institution or foundation in a local endowment fund or a

foundation's fund. Otherwise unrestricted gifts may be deposited in the endowment fund by the institution or foundation.

(4) Once sufficient private donations are received by the institution or foundation, the institution shall inform the college board and request state matching funds. The college board shall evaluate the request for state matching funds based on program priorities and guidelines. The college board may ask the state treasurer to release the state matching funds to a local endowment fund established by the institution or a foundation's fund established by a foundation for each faculty award created.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.50 RCW to read as follows:

For purposes of RCW 28B.50.835 through 28B.50.843 "foundation" means a private nonprofit corporation that: (1) Is registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code; (2) exists solely for the benefit of one or more community or technical colleges in this state; and (3) is registered with the attorney general's office under the charitable trust act, chapter 11.110 RCW.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.50 RCW to read as follows:

A foundation is not eligible to receive matching funds under RCW 28B.50.835 through 28B.50.843 unless the foundation and the board of trustees of the college for whose benefit the foundation exists have entered into a contract, approved by the attorney general, that: (1) Specifies the services to be provided by the foundation; (2) provides for protection of the community and technical college exceptional awards endowment funds under the foundation's control; and (3) provides for the college's assumption of ownership, management, and control of such funds if the foundation ceases to exist or function properly, or fails to provide the specified services in accordance with the contract.

The principal of the community and technical college exceptional awards endowment fund managed by the foundation shall not be invaded. Funds recovered by a college under this section shall be deposited into the college's local endowment fund. For purposes of this section, community and technical college exceptional awards endowment funds include the private donations, state matching funds, and any accrued interest on such donations and matching funds.

Passed the House March 11, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 88

[Substitute House Bill 1612]

## REMOTE SITE INCUBATORS FOR SALMON ENHANCEMENT PILOT PROJECT

Effective Date: 7/25/93

AN ACT Relating to the enhancement of salmon with remote site incubators; adding new sections to chapter 75.50 RCW; and creating new sections.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that the use of salmon enhancement tools such as remote site incubators may present alternatives for salmon enhancement that could reduce disease, be compatible with wild stock goals, and allow for enhancement in small stream systems for which current enhancement techniques are infeasible. The legislature further finds that although remote site incubators have been developed, their success has not been monitored. It is the intent of the legislature to gauge the feasibility of this technique for salmon enhancement in the state.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 75.50 RCW to read as follows:

The department shall develop and implement a pilot project in one or more watersheds to test the feasibility of remote site incubators for salmon enhancement. The department shall evaluate, at a minimum, salmon egg survival, fry survival, and adult returns. The department shall use volunteers to implement the pilot project.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 75.50 RCW to read as follows:

By December 31, 1993, and each year for the following four years, the department shall report to the appropriate committees of the legislature on the progress and final success of the remote site incubators in the pilot project established in section 2 of this act.

**NEW SECTION.** **Sec. 4.** If specific funding for this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act is null and void.

Passed the House March 11, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 89

[Engrossed House Bill 1621]

## BEEKEEPING STATUTES—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to apiaries; amending RCW 15.60.005, 15.60.007, 15.60.010, 15.60.015, 15.60.020, 15.60.025, 15.60.030, 15.60.040, 15.60.042, 15.60.043, 15.60.050, 15.60.100, 15.60.110, 15.60.120, 15.60.140, 15.60.150, 15.60.170, and 15.60.180; adding new sections to chapter 15.60 RCW; repealing RCW 15.60.200; and prescribing penalties.

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

**Sec. 1.** RCW 15.60.005 and 1988 c 4 s 1 are each amended to read as follows:

(~~As used in~~) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) ~~("Director" means the director of agriculture of the state of Washington;~~  
(2) ~~) "Department" means the department of agriculture of the state of Washington(;)).~~

(2) "Director" means the director of the state department of agriculture or the director's authorized representative.

(3) "Apiary" (~~includes~~) means a site where hives of bees(;) or hives(, and appliances, wherever they) are kept(~~(, located,)~~) or found(;)).

(4) "Abandoned (~~apiary~~) hive" means (~~an apiary that~~) any hive, with or without bees, that evidences a lack of being properly managed in that it has not been supered in the spring, except nucs, or unsupered in the fall, or is otherwise (~~managed for a period of twelve months;~~) unmanaged and left without authorization and unattended on the property of another person or on public land.

(5) "Aparist" means any person who owns bees or is a keeper of bees(;)).

(6) "~~(Appliances)~~ Beekeeping equipment" means any implements or devices used in the (~~manipulating~~) manipulation of bees, their brood, or hives(, which may be used) in (~~any~~) an apiary (~~or any extracting or packing equipment;~~).

(7) "Bees" means (~~honey-producing insects of the species apis mellifera and include the adults;~~) adult insects, eggs, larvae, pupae, or other immature stages (~~thereof;~~) of the species Apis mellifera.

(8) "Certificate" (~~means an inspection document, showing the presence of or freedom from a disease, and origin of shipment documentation which shall be~~) or "certificate of inspection" means an official document (~~of the regulatory agency responsible for issuance;~~) certifying compliance with the requirements of this chapter and accompanying the movement of inspected bees, bee hives, or beekeeping equipment.

(9) "Colony" (~~or "colonies of bees"~~) refers to (~~any~~) a natural group of bees having a queen(;) or queens.

(10) "Compliance agreement" means a written agreement between the department and a person engaged in apiculture, or handling, selling, or moving



of hives or beekeeping equipment in which the person agrees to comply with stipulated requirements.

(11) "Feral colony" means a colony of bees in a natural cavity or a manufactured structure not intended for the keeping of bees on movable frames and comb.

(12) "Swarm" means a natural group of bees having a queen or queens, which is the progeny of a parent colony, without a hive, and not a feral colony.

(13) "Disease" (~~includes but is not limited to~~) means American foulbrood, European foulbrood, chalkbrood, nosema, sacbrood, (~~external and internal mites,~~) or any other viral, fungal, bacterial or insect-related disease (~~or any condition~~) affecting bees or their brood (~~which may cause an epidemic~~).

(~~(14)~~) (14) "Regulated bee pests" means a disease of bees for which maximum allowable limits of infection, or mites, or other parasites are set in rule.

(15) "Hive" means (~~any~~) a manufactured receptacle or container (~~made of~~) prepared for the use of bees, (~~or box or other container taken possession of by bees, including~~) that includes movable frames, combs, (~~or~~) and substances deposited into the hive by bees(~~;~~).

(~~(12)~~) "Location" means any premises upon which an apiary is located;

(~~(13)~~) (16) "Person" (~~includes any~~) means a natural person, individual, firm, partnership, company, society, association, (~~or~~) corporation (~~, but does not include any common carrier when engaged in the business of transporting bees, hives, appliances, bee cages, or other commodities subject to the provisions of this chapter, in the regular course of business;~~

(14) "Inspector" means an apiary inspector authorized by the director to inspect apiaries as provided in this chapter) or every officer, agent, or employee of one of these entities.

(17) "Bee pests" means a disease, mite, or other parasite that causes injury to bees.

(18) "Nets" means a device that is made of fabricated material and that is designed and utilized to prevent the escape of bees from bee hives during transit.

(19) "Apparently free" means no specified bee pest was found during inspection of survey activities.

(20) "Substantially free" means levels of specified bee pests found during inspection or survey activities were within established tolerances.

(21) "Africanized honey bee" means any bee of the subspecies *Apis mellifera scutellata*.

(22) "Super" means the portion of a hive in which honey is stored by bees.

**Sec. 2.** RCW 15.60.007 and 1988 c 4 s 14 are each amended to read as follows:

(The apiary inspection fund shall be part of the agricultural local fund. No appropriation is required for disbursements from the apiary inspection fund.)

There is created within the department of agriculture an apiary inspection program. The director shall: Provide regulation and inspection services, assure

availability of bee colonies for pollination, facilitate the interstate movement of honey bees, promote improved apicultural practices, combat bee pests that pose an economic threat to the industry, and, in cooperation with the cooperative extension program of Washington State University, provide education to promote the vitality of the apiary industry.

**Sec. 3.** RCW 15.60.010 and 1975-'76 2nd ex.s. c 34 s 16 are each amended to read as follows:

~~((There is hereby created a division of apiculture in the department of agriculture, which shall consist of the director of agriculture and of such apiary inspectors as he may appoint. The director shall receive no additional salary for performance of his duties under this chapter but shall be paid travel expenses incurred in performing such duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.))~~

An apiary advisory committee is established to advise the director on the administration of this chapter. The apiary advisory committee may consist of up to eleven members.

(1) The committee shall include six apiarists, appointed by the director, and representing the major geographical divisions of the beekeeping industry in the state as established in rule. In making an appointment, the director shall seek nominations from the beekeepers' organizations within the geographic area and from nonaffiliated apiarists. Apiarists may nominate themselves.

(2) The committee shall include the director and a representative from the Washington State University apiary program or cooperative extension.

(3) The committee may include up to three representatives of receivers of pollination services.

(4) The terms of the apiarist members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any reason, the vacancy shall be filled by the director under the provisions of this section.

(5) The committee shall meet at least once yearly. It may also meet at the call of the director or the request of any three members of the committee. Members of the committee shall serve without compensation but shall be reimbursed for travel expenses incurred in attending meetings of the board and any other official duty authorized by the board and approved by the director, pursuant to RCW 43.03.050 and 43.03.060, if apiarists are charged a registration fee, under RCW 15.60.050, to cover the expenses of the committee.

**Sec. 4.** RCW 15.60.015 and 1988 c 4 s 2 are each amended to read as follows:

~~((The director shall have the power on his own motion or by petition of industry to promulgate and enforce such reasonable rules, regulations, and orders as he may deem necessary or proper to prevent the introduction or spreading of~~

~~diseases affecting bees or appliances in this state, and to promulgate and enforce such reasonable rules, regulations, and orders as he may deem necessary or proper governing the inspection of all bees and appliances within or about to be imported into this state. Such rules may include establishment of:~~

~~(a) Standards of strength for colonies of bees used for pollinating services;~~  
~~(b) A beekeeper certification program for those whose colony management systems consistently have only low levels of American foulbrood;~~

~~(c) Identification for bee hives; and~~

~~(d) Maximum levels of American foulbrood which would prohibit interstate movement of inspected colonies and the colony conditions and inspection season under which such inspections will be conducted.~~

~~(2) All rules, regulations, and orders under this section shall be adopted in accordance with chapter 34.05 RCW.))~~

(1) The director shall determine, with the advice of the apiary advisory committee, if a bee pest represents a significant threat to the apiary industry in the state and may by rule establish maximum allowable levels for these bee pests, for movement of colonies into or within Washington and prescribe procedures for inspection, treatment, or other mitigation measures if such tolerances are exceeded.

(2) The director may inspect apiaries for the presence of bee pests. To support the general health of the apiary industry, the director may investigate outbreaks of any bee disease or infestations of other pests, or bee losses suspected of being caused by pesticides and other chemicals; and conduct surveys for the presence of or levels of a bee pest.

(3) It is the responsibility of every apiarist to perform or cause to be performed any acts necessary to control regulated bee pests in the apiarist's bees or bee equipment where levels exceed maximum allowable limits set in rule. If the director finds a hive in an apiary to be infected or infested beyond maximum allowable limits by bee pests, the director may cause the apiary to be quarantined.

(a) The director shall plainly mark the hives containing regulated bee pests and shall, in writing, notify the apiarist stating the disease or pest found in each hive, identifying the hive by reference to the mark placed upon it, and ordering eradication of such disease or pest as prescribed by the director within a specified time. When the apiarist cannot be contacted immediately, the notice shall be served by placing it conspicuously in the apiary, or by mailing a copy to the apiarist's registered address. If the apiarist fails to take action to control the bee pest in accordance with the notice, the director may control the bee pest or cause the bee pest to be controlled.

(b) When the apiarist cannot be determined, the notice shall be served by posting the notice conspicuously in the apiary. Any apiary presenting an immediate threat of infestation or infection to other apiaries may be impounded by the director and moved to a location where it no longer poses an immediate threat of infestation or infection to other apiaries.

(c) The quarantine shall not be lifted until such time as the director determines that the regulated bee pest has been controlled. During the time the apiary is quarantined, no bees, honey, hives, beekeeping equipment, or other material may be removed from the apiary without written authorization from the director.

(4) A person who inspects an infected or infested hive or knowingly comes in contact with a bee pest, shall, before proceeding to another apiary, disinfect their person, clothing, gloves, tools, and beekeeping equipment that have come in contact with infected or infested bees or material.

(5) An apiarist whose apiary has been found to be infected or infested by a regulated bee pest shall be entitled, upon written request, to a scientific analysis of the infected or infested hive before any action to control the bee pest is taken. The results of the analysis shall be conclusive as to whether the apiary is infested or infected with a regulated bee pest. The costs of scientific analysis shall be paid by the apiarist if the apiary is found to be infested or infected. If the apiary is found not to be infested or infected, the department shall pay the cost of the scientific analysis. The laboratory performing the scientific analysis shall be approved by the director.

(6) Except as provided in subsection (5) of this section, the apiarist shall be responsible for all costs of the department resulting from the quarantine or impoundment of an apiary or the control of a bee pest.

(7) A person aggrieved by an order issued or act taken by the director pursuant to this section is, upon application, entitled to a review of that order or act pursuant to RCW 34.05.479. The application shall serve to stay any order or action, other than a quarantine order, pending the adjudicative proceeding.

**Sec. 5.** RCW 15.60.020 and 1988 c 4 s 3 are each amended to read as follows:

~~((1) The director shall have authority to enter into reciprocal agreements with any and all states for the prevention or spread of diseases affecting bees or appliances. The director shall appoint one or more apiary inspectors as conditions may warrant, who shall, under his direction:~~

- ~~(a) Have charge of the inspection of apiaries and bees;~~
- ~~(b) Investigate outbreaks of bee diseases;~~
- ~~(c) Investigate bee losses suspected of being caused by pesticides and other chemicals;~~
- ~~(d) Investigate bee losses or economic losses as requested by industry;~~
- ~~(e) Perform colony strength inspections;~~
- ~~(f) Perform inspections for out-of-state movement of bees or appliances;~~
- ~~(g) Inspect queen bee rearing apiaries;~~
- ~~(h) Conduct surveys in support of this chapter;~~
- ~~(i) Conduct the enforcement of quarantine regulations as may be promulgated by the department;~~
- ~~(j) Conduct the enforcement of the provisions of this chapter in relation to the eradication and control of bee diseases; and~~

~~(k) Perform any other such duties as the director may prescribe.~~

~~(2) Such apiary inspector, or inspectors, shall be paid such reasonable compensation as may be fixed by the director while so employed and travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060.~~

~~(3) Services or inspections requested by industry shall only be performed for apiarists in compliance with this chapter. The director shall charge the person requesting the inspector's services all costs including per diem and travel expenses, with the proceeds to be placed in the apiary inspection fund within the agricultural local fund.)~~

(1) Whenever the director finds an abandoned hive, or a hive wherein the combs or frames are immovable or that are so constructed as to impede or hinder inspection, and if the hive constitutes a threat of infestation or infection by a bee pest to bees, the director may impound the hive and remove it to a place of safety.

(2) The director shall make a reasonable effort to identify the owner of the hive. If the owner of the hive can be determined, the director shall notify the owner that a violation of this chapter exists. The notice shall be in the same manner as that provided for bee pests and shall specify the actions that the owner must take to eliminate the threat of infestation or infection by bee pests to bees before the owner can take possession of the hive. Failure of the owner to take the necessary action within the time specified in the notice shall constitute abandonment, and the director may take any action necessary to eliminate the threat of infestation or infection to bees.

(3) If the owner of the hive cannot be reasonably ascertained then the director shall provide for notice by publication in a paper of general circulation at least once each week for two consecutive weeks. Notice by publication need not be provided where the cost of publication exceeds the value of the hive.

(4) Whenever the owner of the hive cannot be determined, or can be determined but fails to take possession of the hive, the director may sell or otherwise dispose of the hive.

(5) The owner of an abandoned hive is liable for all costs of the department resulting from the impounding or sale of a hive and any action taken to eliminate the threat of infestation or infection by a bee pest to bees.

(6) A person aggrieved by an order issued or act taken by the director pursuant to this section is, upon application, entitled to a review of that order or act pursuant to RCW 34.05.479. The application shall serve to stay any order or action pending the adjudicative proceeding.

**Sec. 6.** RCW 15.60.025 and 1988 c 4 s 4 are each amended to read as follows:

~~((There is created in the department the apiary advisory board, hereafter in this section referred to as the "board", consisting of six members appointed by the director. The members of the board shall be beekeepers representing the major geographical divisions of the beekeeping industry in the state. Such~~

~~geographical divisions shall be determined by the director in accordance with the provisions of chapter 34.05 RCW. In making the selection of the membership of the board, the director shall take into consideration the recommendations of the beekeeping industry.~~

~~The term of office of the members of the board shall be three years. No person shall serve two successive terms as a member of the board.~~

~~The director may appoint a department representative as the secretary of the board.~~

~~The board shall be advisory to the director on all matters relating to the beekeeping industry and may make recommendations on all matters affecting the activities of the department in relation to the beekeeping industry.~~

~~The board shall meet at the call of the director or at the request of any three members of the board. It shall meet at least once each year.~~

~~Each member of the board shall serve without compensation, but shall be reimbursed for travel expenses incurred in attending meetings of the board and any other official duty authorized by the board and approved by the director in accordance with RCW 43.03.050 and 43.03.060: PROVIDED, HOWEVER, That the board shall be compensated only if apiarists are charged a sufficient fee to cover the expenses of the apiary board.))~~

In addition to the powers conferred on the director under other provisions of this chapter, the director shall have the power to adopt rules with the advice of the apiary advisory committee and pursuant to the administrative procedure act, chapter 34.05 RCW:

(1) Specifying marking and identification requirements for all hives of bees in the state of Washington including resident colonies, migratory colonies registered in Washington, and colonies brought into the state for pollination services;

(2) Establishing requirements for netting and other handling of bees in transit;

(3) Prescribing bee breeding procedures and standards to prevent Africanization and permitting importation pursuant to the conditions set forth in RCW 15.60.140;

(4) Establishing standards for certification of bees, bee hives, and beekeeping equipment including but not limited to:

(a) Standards of colony strength for hives of bees for pollination services;

(b) Standards for queen bee production and marketing;

(5) A beekeeper certification program that may provide for decreased levels of inspection for those beekeepers whose apiaries consistently have levels of disease within established tolerances;

(6) Establishing fees for inspection or certification services;

(7) Conducting such activities as may be otherwise necessary for carrying out the purposes of this chapter.

Sec. 7. RCW 15.60.030 and 1988 c 4 s 5 are each amended to read as follows:

~~((Each person owning or having bees in his or her possession shall register with the director the name, address, and phone number of the owner, and identify the apiary as provided for herein, on or before April 1st each year. A registration fee may be set by the department of agriculture in compliance with chapter 34.05 RCW for the purpose of covering the expenses of the apiary board, or otherwise at the request of the industry. The fees shall be placed in the apiary inspection fund of the department.~~

~~The director shall issue to each apiarist owning or operating more than twenty five colonies in the state who is registered with the department an apiarist identification number. Apiary locations shall be identified by displaying the assigned identification number in at least four inch characters on the side and top of some colonies in each apiary location. The identification shall be in a color that contrasts with the color of the hive. This identification shall be conspicuous to anyone approaching the apiary location. Any apiarist owning or operating no more than twenty five colonies shall, when placing bees on other than his or her own property, place his or her name and address so as to be conspicuous to anyone approaching the apiary location.))~~

(1) It shall be unlawful for a person to bring any packaged bees, queens, hives with or without bees, or other used beekeeping equipment into this state for any purpose without first having secured a certificate of inspection from the state of origin department of agriculture, which shall be based on an official inspection, certifying compliance with the requirements of this chapter and rules adopted under this chapter. New equipment without bees shall not be regulated.

(2) A copy of the certificate shall be sent to the department by mail or telefax prior to shipment of hives with or without bees, or equipment into the state and a copy shall accompany the shipment. Queens and packaged bees are exempt from this subsection. The certificate shall verify that the hives in a shipment are in compliance with the limits established in rule for regulated bee pests, the state of origin, the number of hives or description of other regulated items in the shipment, and the destination of the shipment, including the name and complete address and phone number of the person in charge of the apiary location at destination.

(3) Queen and package bee producers shall provide the department a list of Washington destination shipments with names and addresses of receivers by August 1st of each calendar year.

(4) Packaged bees, queens, hives with or without bees, and beekeeping equipment found by the director to have been imported in violation of this section may be held for inspection by the department. Inspection costs shall be charged to the apiarist in charge of the bees, hives, or equipment. Fees collected shall be placed in the apiary inspection account established in RCW 15.60.040.

(5) A Washington registered apiarist who obtains a valid inspection certificate and moves bees out of state for wintering shall be allowed to return the bees to the state without an additional inspection certificate provided that the bees are returned to the state prior to May 15th each year.

Sec. 8. RCW 15.60.040 and 1988 c 4 s 6 are each amended to read as follows:

~~((1) The director shall make or cause to be made whenever the director deems it necessary, inspections of all apiaries.~~

~~(2) Whenever a disease exists in any apiary, the inspector making the inspection may quarantine the apiary and shall plainly mark the hives containing diseased bees. The inspector shall, in writing, notify the owner or person in charge or in possession of such apiary, stating in the notice the nature of the disease found in each colony, identifying such colony by reference to the mark placed upon the hive thereof, and ordering eradication of such disease in accordance with subsections (3) and (4) of this section or as prescribed by the director within a specified time. When the owner or person in charge or in possession of any apiary cannot be contacted immediately, the notice shall be served by placing conspicuously in the apiary, or by mailing a copy thereof to the owner's registered address.~~

~~(3) The owner or person in charge or in possession of any diseased bees or hives must eradicate such disease within the time specified in the notice. If the disease is American foulbrood, the time specified in the notice shall not be less than twenty four hours nor more than one hundred and twenty hours from the time of serving the notice.~~

~~(4) The owner or person in charge or in possession of any hive infected with American foulbrood shall eradicate such disease by:~~

~~(a) Burning the diseased hive including bees, combs, frames, honey, and wax, and burying the ashes by means approved by the director; or~~

~~(b) Delivering the hive, comb intact, to a wax salvage plant or fumigation chamber which has been authorized and designated by the director as suitable for such purposes which shall disinfect the hive by means approved by the director.~~

~~(5) Any apiary which is found infected with disease and to be dangerous to the health of any apiary in this state may be summarily quarantined by the department. Notice of the quarantine shall be placed conspicuously in the apiary, and the owner notified of such quarantine. The quarantine shall not be removed until the department reasonably determines that no further infection exists. During the quarantine period, no bees, honey, appliances, or other materials may be removed from the apiary without first procuring a permit from the department.~~

~~(6) If the inspector finds that American foulbrood disease has infected more than two hives of ninety nine hives or fewer, or more than two percent of hives of one hundred or more, the inspector may, if he or she deems it necessary, make a complete inspection of all hives in the apiary and the owner of the apiary shall pay the actual and necessary costs of the complete inspection.~~

~~(7) The owner or operator of any colony of bees found to be infected with American foulbrood shall upon his or her request be entitled to a scientific analysis of such colony before it is declared a public nuisance by the director. The results of such analysis shall be conclusive as to whether the colony is diseased. The costs of such scientific analysis shall be paid by the apiarist~~



~~owning or operating the colonies being analyzed if it is found to be diseased. In case the colony is found not to be diseased, the department shall pay the cost of the scientific analysis. The laboratory performing such scientific analysis shall be approved by the director.~~

~~A person who has inspected an infected apiary or knowingly comes in contact with any diseased bees, shall, before proceeding to another apiary, thoroughly disinfect his or her person, clothing, tools, and appliances that have come in contact with any infected bees or material.)~~

There is established an apiary inspection account within the agricultural local fund. All money collected under this chapter including fees for requested services, required inspections, or treatments, and registration fees shall be placed in the apiary inspection account. No appropriation is required for disbursement from the apiary inspection account.

Sec. 9. RCW 15.60.042 and 1988 c 4 s 7 are each amended to read as follows:

~~((1) The following are declared a public nuisance and in violation of this chapter:~~

- ~~(a) Any apiary in which American foulbrood is found;~~
- ~~(b) Any hives wherein the combs or frames are immovable or which are so constructed as to impede or hinder inspection;~~
- ~~(c) Any abandoned apiary; and~~
- ~~(d) Any colony of *apis mellifera scutellata* or hybrid of that subspecies.~~

~~(2) The inspector shall give notice of such violation in the manner provided in RCW 15.60.040. Whenever any such nuisance exists and the owner refuses or fails to abate it within the time specified in the notice, the department shall abate the nuisance. The owner shall pay the actual and necessary costs of abatement, with the proceeds to be placed in the apiary inspection fund of the department.~~

~~(3) Whenever the director finds that an apiary has been abandoned and that the apiary constitutes a threat of disease to bees, the director may seize and destroy the abandoned apiary. Before doing so, however, the director shall make a reasonable effort to identify the owner of the apiary and provide the owner with notice of the director's intent to seize and destroy the apiary and with opportunity to take possession of the apiary and eliminate the threat of disease. If ownership cannot be readily ascertained and if the apiary is considered to have value, then the director shall provide for notice by publication. However, notice by publication need not be provided if the value is less than the publication costs. Whenever an owner reclaims an abandoned apiary, the owner shall be liable for all costs of the department resulting from the abandonment.)~~

A registered apiarist or other interested party may request the services of an apiary inspector to provide inspection and certification services to facilitate the movement of honey bees, bee hives, or beekeeping equipment or to provide other requested services. The director shall prescribe a fee for those services that shall,

as closely as practical, cover the full cost of the services rendered, including the salaries and expenses of the personnel involved.

**Sec. 10.** RCW 15.60.043 and 1988 c 4 s 8 are each amended to read as follows:

~~((An apiarist or his or her pollination customer may request the director to make a colony strength inspection of any colony of bees. The director, subject to the availability of qualified personnel, shall make such inspection but shall provide the apiarist with advance notice, when possible, of the inspection date. A copy of the inspection certificate shall be sent to the person requesting the inspection and the apiarist within forty eight hours of the colony strength inspection.~~

~~The colony strength requirement shall be decided on a yearly basis by the director, in cooperation with the apiary advisory board created by RCW 15.60.025.))~~

The inspection fees and other charges provided in this chapter shall become due and payable upon billing by the department. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. In addition to any other penalties, the director may refuse to perform an inspection or certification service for a person in arrears unless the person makes payment in full prior to such inspection or certification service.

**Sec. 11.** RCW 15.60.050 and 1988 c 4 s 9 are each amended to read as follows:

~~((Inspectors shall have access to all apiaries and places where bees, hives, or appliances are kept, and it shall be unlawful to resist, impede, or hinder such inspectors in the discharge of their duties.))~~

Each person owning one or more hives with bees shall register that ownership with the director on or before April 1st each year.

(1) Registration application shall include the name, address, and phone number of the owner, the number of colonies of bees owned, and such registration fee as may be prescribed in rule under subsection (2) of this section. The director shall issue to each apiarist registered with the department an apiarist identification number. The apiarist identification number shall be displayed on hives of an apiary in a manner prescribed by the director in rule.

(2) A registration fee may be set in rule by the director, with the advice of the apiary advisory committee. The fee shall be used for covering the expenses of the apiary advisory committee and may be used for supporting the apiary program of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee.

**Sec. 12.** RCW 15.60.100 and 1988 c 4 s 10 are each amended to read as follows:

~~((1) It shall be unlawful for any person or common carrier to bring into this state for any purpose any bees or used appliances, except empty used package bee cages, without first having secured an official certificate, which shall be based on an inspection performed no more than sixty days prior to movement (except by special permission from the department) by the state bee inspector of the state of origin and an import permit issued by the department. The import permit with specific requirements may be obtained by mailing the original copy of the state of origin certificate and a request for a permit to the apiary inspection division of the department. Queen and package producers shall provide a list of Washington destination shipments with names and addresses at the end of the shipping season.~~

~~(2) The certificate shall contain, but not be limited to, a statement that the shipment is not infected with American foulbrood or other diseases regulated by the department and the state of origin and shall specify all diseases noted at the time of inspection and the number of colonies in the shipment. It shall also indicate the destination of the apiary, giving the name and complete address or phone number of the apiarist in charge of the apiary location at destination.~~

~~(3) A copy of the import permit shall accompany the shipment into Washington. Bees and appliances found to have been imported without compliance with this section may be summarily quarantined and inspected by the department. Inspection costs, including per diem and travel expenses, shall be charged to the apiarist in charge of the colonies. Fees collected shall be placed in the apiary inspection fund of the department.~~

~~(4) Nets or other devices approved by the director shall be required on all loads of hives containing bee colonies entering or leaving the state to prevent the escape of bees during transit.~~

~~(5) Each apiary or location shall be marked for identification by placing the name and address of the person importing the bees, hives, or used appliances in letters at least one inch in height so as to be conspicuous to anyone approaching the apiary location.~~

~~(6) If evidence of any disease is found, such imported bees or appliances shall be subject to the same provisions as local Washington bees or appliances.~~

~~(7) A resident beekeeper of Washington state who obtains a valid inspection certificate and moves his or her bees out of state for wintering may not be required to obtain an inspection certificate from the state from which they are being returned, provided that the bees are returned to the state prior to May 15th each year.~~

~~(8) A resident beekeeper of Washington state who moves his or her bees out of state for summer pasture shall be required to obtain an inspection certificate from that state prior to returning to Washington, even though the bees may winter in a third state prior to returning to Washington.))~~

In addition to the powers conferred on the director under other provisions of this chapter, the director shall have the power to:

(1) Cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purposes and provisions of this chapter.

(2) Conduct educational or other programs in cooperation with Washington State University cooperative extension to enhance the welfare of Washington apiculture.

(3) Enter into compliance and other agreements with persons engaged in apiculture, or handling, selling, or moving of hives or beekeeping equipment.

(4) Do such things as may be necessary and incidental to his or her functions pursuant to this chapter.

Sec. 13. RCW 15.60.110 and 1988 c 4 s 11 are each amended to read as follows:

~~((No person shall knowingly import into this state any bees of the subspecies *apis mellifera scutellata*, or Africanized honey bees, except for research purposes under permit from the director and under conditions as set forth by the director.))~~

The director shall have access at reasonable times to all apiaries and places where beekeeping equipment is kept to conduct inspections for the presence of bee pests and to otherwise carry out the purposes of this chapter. If the director is denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon the showing of good cause issue the search warrant for the purposes requested.

Sec. 14. RCW 15.60.120 and 1988 c 4 s 12 are each amended to read as follows:

~~(1) Every person rearing queen bees for sale or use by another apiarist shall request each queen rearing apiary be inspected ((when conditions are favorable for inspection. If the inspection discloses any contagious or infectious disease in any apiary, the apiarist shall not ship any queen bees therefrom until he or she receives a certificate in writing from the inspector))~~ for the presence of disease during active brood rearing. No person may ship queen bees from a queen rearing apiary without a certificate of inspection certifying that such apiary is apparently free from disease.

~~((No person)) (2) The apiarist rearing queen bees ((for sale)) may ((use honey in making candy for use in mailing cages unless the honey has been boiled for at least thirty minutes))~~ be required to do so under procedures and standards as may be established in rule for assuring freedom from bee pests and Africanized honey bees.

Sec. 15. RCW 15.60.140 and 1988 c 4 s 13 are each amended to read as follows:

~~((Any person who violates any provisions of this chapter shall have committed a class I civil infraction as provided in chapter 7.80 RCW.))~~

(1) Africanized honey bees may be imported into the state under the following conditions:

(a) Hybrids of *Apis mellifera scutellata* may be permitted into Washington if they have been bred or certified for acceptable behavior and approved by the director.

(b) Africanized honey bees or their hybrids may be imported under terms and conditions established in permit for research purposes.

(c) If the director, with concurrence from the apiary advisory committee and after opportunity for one or more public hearings, pursuant to adoption of rules:

(i) Finds that Africanized honey bees have become widely established and that exclusion is no longer technically feasible; and

(ii) Determines that deregulation is in the best interest of Washington agriculture; and

(iii) Has approved a plan to mitigate the impact of Africanized honey bees.

(2) If the director finds Africanized honey bees or hybrids of Africanized honey bees that have been imported into the state under circumstances other than those provided in subsection (1) of this section, the director may impound and destroy or cause to be destroyed such bees. The apiarist shall be entitled upon written request to a scientific analysis under the terms provided in RCW 15.60.015. A person aggrieved by an order issued or act taken by the director pursuant to this subsection is, upon application, entitled to a review of that order or act pursuant to RCW 34.05.479. The application shall serve to stay an order or action pending the adjudicative proceeding unless the director determines that the bees cannot be impounded without presenting an imminent threat of Africanization to other bees within the state.

**Sec. 16.** RCW 15.60.150 and 1981 c 296 s 13 are each amended to read as follows:

~~((No person shall))~~ It shall be unlawful for a person to:

(1) Willfully or maliciously kill honey bees in an apiary, or, for the purpose of injuring honey bees place any poisonous or sweetened substance in a place where it is accessible to them within this state((-

~~Any person who violates any provision of this section shall be guilty of a misdemeanor))~~ except that bees in swarms or feral colonies may be depopulated;

(2) Alter an official certificate or other official inspection document for bees, hives, or beekeeping equipment covered by this chapter or to represent a document as an official certificate where such is not the case;

(3) Knowingly import into the state bees of the subspecies *Apis mellifera scutellata* (Africanized honey bees) except as provided in RCW 15.60.120;

(4) Resist, impede, or hinder the director in the discharge of the director's duties and responsibilities under this chapter;

(5) Fail to take prompt and sufficient action to control regulated bee pests in excess of limits set in rule;

(6) Abandon a hive;

(7) Maintain a hive, except for educational purposes, wherein the combs or frames are immovable or that is so constructed as to impede or hinder inspection.

**Sec. 17.** RCW 15.60.170 and 1991 c 363 s 15 are each amended to read as follows:

~~((The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering on the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.190, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and/or the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area.))~~

(1) A person who violates or fails to comply with any of the provisions of this chapter or any rule adopted under this chapter shall be guilty of a misdemeanor, and for a second and each subsequent violation a gross misdemeanor.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter or any rule adopted under this chapter and that violation has not been punished as a misdemeanor or gross misdemeanor, the director may impose and collect a civil penalty not exceeding one thousand dollars for each violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of omission or commission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty.

**Sec. 18.** RCW 15.60.180 and 1989 c 354 s 65 are each amended to read as follows:

When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in RCW ~~((15.60.170 through))~~ 15.60.180, 15.60.190, and 15.60.210.

**NEW SECTION.** Sec. 19. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court in the county in which such violation occurs notwithstanding the existence of other remedies at law.

**NEW SECTION.** Sec. 20. The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering in [on] the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.190, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and

the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area.

NEW SECTION. **Sec. 21.** RCW 15.60.200 and 1989 c 354 s 67 are each repealed.

NEW SECTION. **Sec. 22.** Sections 19 and 20 of this act are each added to chapter 15.60 RCW.

Passed the House March 13, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 90

[House Bill 1651]

### NATUROPATHY—TERMINATION PROVISIONS REPEALED

Effective Date: 7/25/93

AN ACT Relating to removing the termination provisions for naturopathy; and repealing RCW 18.36A.910 and 18.36A.911.

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

NEW SECTION. **Sec. 1.** The following acts or parts of acts are each repealed:

(1) RCW 18.36A.910 and 1990 c 297 s 11 & 1987 c 447 s 21; and

(2) RCW 18.36A.911 and 1990 c 297 s 12 & 1987 c 447 s 22.

Passed the House March 11, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 91

[Substitute House Bill 1837]

### REINSURANCE—CREDIT FOR—REVISED REQUIREMENTS TO TAKE

Effective Date: 7/25/93

AN ACT Relating to credit for reinsurance; and amending RCW 48.05.300 and 48.12.160.

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

**Sec. 1.** RCW 48.05.300 and 1977 ex.s. c 180 s 1 are each amended to read as follows:

No credit shall be allowed to any domestic insurer, as an asset or as a deduction from liability for reinsurance ceded to an insurer, ~~((other than under a contract of ocean marine insurance))~~ except as provided in RCW 48.12.160.

**Sec. 2.** RCW 48.12.160 and 1977 ex.s. c 180 s 3 are each amended to read as follows:

(1) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss (~~(and unearned premium)~~) or claim, unearned premium, or life policy or contract reserves on risks ceded to a reinsurer to the extent reinsured by an insurer or insurers ((authorized)) holding a certificate of authority to transact that kind of business in this state. The credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken:

(a) ~~Where the reinsurer ((maintains sufficient assets in the United States for the protection of policyholders in the United States and operates its business in such manner as to satisfy the commissioner that it maintains a financial condition reasonably comparable to those required of admitted insurers and that it is able to pay losses in the United States))~~ is a group of unincorporated underwriters, and the group maintains a trust fund in a United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, which trust fund must be in an amount equal to the group's liabilities attributable to business written in the United States, and in addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants; or

(b) In an amount not exceeding:

(i) The amount of deposits by and funds withheld from the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if the deposits or funds are assets of the types and amounts that are authorized under chapter 48.13 RCW and are held subject to withdrawal by and under the control of the ceding insurer or if the deposits or funds are placed in trust for these purposes in a bank which is a member of the federal reserve system and withdrawals from the trust cannot be made without the consent of the ceding company; or

(ii) The amount of a clean (~~(and)~~) irrevocable, and unconditional letter of credit issued by a ((bank which is a member of the federal reserve system for a term of at least two years if the letter of credit is)) United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, and issued for a term of at least one year with provisions that it must be renewed unless the bank gives notice of nonrenewal at least thirty days before the expiration issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under ((subparagraph)) (b)(i) of this subsection.



(2) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must be payable by the assuming insurer on the basis of liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company, and any such reinsurance agreement which may be canceled on less than ninety days notice must provide for a run-off of the reinsurance in force at the date of cancellation.

(3) A reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(4) Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Passed the House March 13, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 92

[Substitute House Bill 1839]

### DOMESTIC INSURERS—LIMITATIONS ON ALLOWABLE INVESTMENTS

Effective Date: 7/25/93

AN ACT Relating to investments of domestic insurers; amending RCW 48.13.030, 48.13.050, 48.13.060, 48.13.270, and 48.13.120; and adding new sections to chapter 48.13 RCW.

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

**Sec. 1.** RCW 48.13.030 and 1947 c 79 s .13.03 are each amended to read as follows:

Except as set forth in section 5 of this act, an insurer shall not, except with the consent of the commissioner, have at any time any combination of investments in or loans upon the security of the obligations, property, and

securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. This section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state of the United States, nor to investments in foreign securities pursuant to subsection (1) of RCW 48.13.180, nor include policy loans made pursuant to RCW 48.13.190.

**Sec. 2.** RCW 48.13.050 and 1947 c 79 s .13.05 are each amended to read as follows:

Except as set forth in section 5 of this act, an insurer may invest any of its funds in obligations other than those eligible for investment under RCW 48.13.110 if they are issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, and are qualified under any of the following:

(1) Obligations which are secured by adequate collateral security and bear fixed interest if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in RCW 48.13.060, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of stock other than stock meeting the requirements of RCW 48.13.080.

(2) Fixed interest bearing obligations, other than those described in subdivision (1) of this section, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during the last year of such period such net earnings have been not less than one and one-half times its fixed charges for such year.

(3) Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during each of the last two years of such period such net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

**Sec. 3.** RCW 48.13.060 and 1947 c 79 s .13.06 are each amended to read as follows:

(1) Certain terms used are defined for the purposes of this chapter as follows:

(a) "Obligation" includes bonds, debentures, notes or other evidences of indebtedness.

(b) (~~"Institution" includes corporations, joint stock associations, and business trusts.~~

(e)) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

~~((d))~~ (c) "Fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

(d) "Admitted assets" means the amount as of the last day of the most recently concluded annual statement year, computed in the same manner as "assets" in RCW 48.12.010.

(e) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value of those obligations thereof.

(f) "Institution" means a corporation, a joint stock company, an association, a trust, a business partnership, a business joint venture, or similar entity.

(2) If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner.

**Sec. 4.** RCW 48.13.270 and 1982 c 218 s 5 are each amended to read as follows:

An insurer shall not, except with the commissioner's approval in advance, invest in or loan its funds upon the security of, or hold:

(1) Issued shares of its own capital stock, except for the purpose of mutualization in accordance with RCW 48.08.080;

(2) Securities issued by any corporation, except as specifically authorized by this chapter directly or by exception, if a majority of the outstanding stock of such corporation, or a majority of its stock having voting powers, is or will be after such acquisition, directly or indirectly owned by the insurer, or by any combination of the insurer and the insurer's directors, officers, parent corporation, and subsidiaries;

(3) Securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors;

- (4) Any investment or loan ineligible under the provisions of RCW 48.13.030;
- (5) Securities issued by any insolvent corporation;
- (6) Obligations contrary to the provisions of section 5 of this act; or
- (7) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code.

**NEW SECTION.** Sec. 5. A new section is added to chapter 48.13 RCW to read as follows:

- (1) As used in this section:
  - (a) "Lower grade obligations" means obligations that are rated four, five, or six by the securities valuation office.
  - (b) "Medium grade obligations" means obligations that are rated three by the securities valuation office.
  - (c) "Securities valuation office" means the entity created by the national association of insurance commissioners in part, to assign rating categories for bond obligations acquired by insurers.
- (2) No insurer may acquire directly or indirectly, any medium grade or lower grade obligation if, after giving effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the insurer would exceed twenty percent of its admitted assets provided that:
  - (a) No more than ten percent of an insurer's admitted assets may be invested in lower grade obligations;
  - (b) No more than three percent of an insurer's admitted assets may be invested in lower grade obligations rated five or six by the securities valuation office;
  - (c) No more than one percent of an insurer's admitted assets may be invested in lower grade obligations rated six by the securities valuation office;
  - (d) No more than one percent of an insurer's admitted assets may be invested in medium and lower grade obligations issued, guaranteed, or insured by any one institution; and
  - (e) No more than one-half of one percent of an insurer's admitted assets may be invested in lower grade obligations issued, guaranteed, or insured by any one institution.
- (3) This section does not require an insurer to sell or otherwise dispose of any obligation lawfully acquired before the effective date of this act, or in accordance with this chapter. The commissioner shall adopt rules identifying the circumstances under which the commissioner may approve an investment in obligations exceeding the limitations of this section as necessary to mitigate financial loss by an insurer.
- (4) The board of directors of any domestic insurance company which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations of any institution, shall adopt a written plan for making those investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification

standards including, but not limited to, standards for issuer, industry, duration, liquidity, and geographic location.

**NEW SECTION. Sec. 6.** A new section is added to chapter 48.13 RCW to read as follows:

Notwithstanding the provisions of RCW 48.13.050, an insurer may invest its funds in obligations rated by the securities valuation office. Investments in obligations that are rated one or two by the securities valuation office shall be subject to the limitations contained in RCW 48.13.030.

**Sec. 7.** RCW 48.13.120 and 1969 ex.s. c 241 s 5 are each amended to read as follows:

(1) An investment made pursuant to the provisions of RCW 48.13.110 shall not exceed seventy-five percent of the fair value of the particular property at the time of investment. However, if the loan is secured by a first mortgage or other first lien upon real property improved with a single-family residential building, the terms of such loan provide for monthly payments of principal and interest sufficient to effect full repayment of the loan within the remaining useful life of the building as estimated in the appraisal for the loan, or thirty years and two months, whichever is less, the principal so loaned or the entire note or bond issue so secured, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property, may not exceed eighty percent of the market value of the real property, or of the real property together with the improvements which are taken as security. This restriction shall not apply to purchase money mortgages or like securities received by an insurer upon the sale or exchange of real property acquired pursuant to RCW 48.13.160.

(2) The extent to which a mortgage loan made under ~~((subdivision (3) or (4) of))~~ RCW 48.13.110 ~~(3) or (4)~~ is guaranteed or insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs may be deducted before application of the limitations contained in subsection (1) of this section.

Passed the House March 10, 1993.

Passed the Senate April 5, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 93

[House Bill 1857]

## TRAVEL EXPENSES FOR PROSPECTIVE HIGHER EDUCATION EMPLOYEES

Effective Date: 7/25/93

AN ACT Relating to travel expenses of prospective higher education employees; and amending RCW 43.03.130.

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

**Sec. 1.** RCW 43.03.130 and 1975-'76 2nd ex.s. c 34 s 96 are each amended to read as follows:

Any state office, commission, department or institution may agree to pay the travel expenses of a prospective employee as an inducement for such applicant to travel to a designated place to be interviewed by and for the convenience of such agency: PROVIDED, That if such employment is to be in the classified service, such offer may be made only on the express authorization of the state department of personnel, or other corresponding personnel agency as provided by chapter 41.06 RCW, to applicants reporting for a merit system examination or to applicants from an eligible register reporting for a pre-employment interview. Travel expenses authorized for prospective employees called for interviews shall be payable at rates in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. When an applicant is called to be interviewed by or on behalf of more than one agency, the authorized travel expenses may be paid directly by the authorizing personnel department or agency, subject to reimbursement from the interviewing agencies on a pro rata basis.

In the case of both classified and exempt positions, such travel expenses will be paid only for applicants being considered for the positions of director, deputy director, assistant director, or supervisor of state departments, boards or commissions; or equivalent or higher positions; or engineers, or other personnel having both executive and professional status. In the case of four-year institutions of higher education, such travel expenses will be paid only for applicants being considered for academic positions above the rank of instructor or professional or administrative employees in supervisory positions. In the case of community and technical colleges, such travel expenses may be paid for applicants being considered for full-time faculty positions or administrative employees in supervisory positions.

Passed the House March 8, 1993.

Passed the Senate April 5, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

## CHAPTER 94

[Substitute House Bill 1767]

## COMMUNITY AND TECHNICAL COLLEGE INTERCOLLEGIATE COACHES

Effective Date: 7/25/93

AN ACT Relating to community and technical college intercollegiate coaches; adding new sections to chapter 28B.50 RCW; and creating new sections.

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

**NEW SECTION.** Sec. 1. The legislature supports the establishment of minimum standards for intercollegiate coaches and a process to ensure the safety and appropriate skill development of student athletes.

**NEW SECTION.** Sec. 2. The state board for community and technical colleges in consultation with the Northwest athletic association of community colleges and other interested parties shall encourage community colleges to ensure that intercollegiate coaches meet the following minimum standards:

(1) Verification of up-to-date certification in first aid and cardiopulmonary resuscitation;

(2) Maintaining knowledge of Northwest athletic association of community colleges codes, rules, and institutional policy; and

(3) Encouragement of coaches to participate in appropriate in-service training and activities.

**NEW SECTION.** Sec. 3. The community and technical colleges are encouraged to provide training to promote development of coaching competence and to enhance the coaching techniques of intercollegiate coaches. The community and technical colleges may offer this educational service to coaches in the community and technical colleges, common schools, amateur teams, youth groups, and community sports groups. The community and technical colleges may provide this educational service through curriculum courses, workshops, or in-service training.

**NEW SECTION.** Sec. 4. The state board for community and technical colleges shall report to the legislature by December 30, 1994, on the status of this act. The report shall include, but not be limited to:

(1) An evaluation of the current process for determining the qualifications of community college intercollegiate coaches; and

(2) A recommendation of methods for improving the knowledge and competence of intercollegiate coaches.

**NEW SECTION.** Sec. 5. Sections 2 and 3 of this act are each added to chapter 28B.50 RCW.

Passed the House March 15, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

CHAPTER 95

[Engrossed Substitute House Bill 1670]

SERVICE CREDIT FOR PUBLIC EMPLOYEES FOR PERIODS OF PAID LEAVE

Effective Date: 4/21/93

AN ACT Relating to providing service credit for periods of paid leave; amending RCW 41.40.710, 41.26.520, and 41.32.810; reenacting and amending RCW 41.32.010 and 41.40.010; adding a new section to chapter 41.40 RCW; adding a new section to chapter 41.26 RCW; adding a new section to chapter 41.32 RCW; creating a new section; repealing RCW 41.32.034 and 41.32.355; repealing 1992 c 3 s 4 (uncodified); and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.40 RCW under the subchapter heading "Plan I" to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.40.145 through 41.40.363.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

Sec. 2. RCW 41.40.710 and 1992 c 119 s 3 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection ~~((3))~~ (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be



obtained only if the member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner. The contributions required shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

~~((3))~~ (4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to four years of military service.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.40.650 plus interest as determined by the department within five years of resumption of service or prior to retirement, whichever comes sooner.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer for its contribution required under RCW 41.40.650 for the period of military service, plus interest as determined by the department.

(c) The contributions required shall be based on the average of the member's compensation earnable at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

**NEW SECTION. Sec. 3.** A new section is added to chapter 41.26 RCW under the subchapter heading "Plan I" to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.26.080 through 41.26.3903.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

**Sec. 4.** RCW 41.26.520 and 1992 c 119 s 1 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

~~(3)~~ (4) Except as specified in subsection ~~((3))~~ (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner: PROVIDED, That for the purpose of this subsection the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.26.450. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

~~((3))~~ (4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to four years of military service.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.26.450 plus interest as determined by the department within five years of resumption of service or prior to retirement, whichever comes sooner.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required shall be based on the average of the member's basic salary at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

~~((4))~~ (5) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence.

**NEW SECTION. Sec. 5.** A new section is added to chapter 41.32 RCW under the subchapter heading "Plan I" to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.32.240 through 41.32.575.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

**Sec. 6.** RCW 41.32.810 and 1992 c 119 s 2 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection ~~((3))~~ (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner: PROVIDED, That for the purpose of this subsection the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.32.775. The contributions required shall

be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

~~((3))~~ (4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to four years of military service.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.32.775 plus interest as determined by the department within five years of resumption of service or prior to retirement, whichever comes sooner.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer for its contribution required under RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required shall be based on the average of the member's earnable compensation at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

**Sec. 7.** RCW 41.32.010 and 1992 c 212 s 1 and 1992 c 3 s 3 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan I members, means the sum of all regular annuity contributions with regular interest thereon.

(b) "Accumulated contributions" for plan II members, means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan I members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan I members.

(10)(a) "Earnable compensation" for plan I members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(ii) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

~~((iii) For members who receive service credit pursuant to RCW 41.32.034 or 41.32.355 for a period of authorized leave from a school district, the earnable compensation allowable for calculation of the member's average final compensation shall be the salary the member would have been paid by the district for the position the member occupied immediately prior to taking leave, as established in the district's collective bargaining agreement for nonsupervisory certificated employees.~~

~~(iv) For members who receive service credit pursuant to RCW 41.32.034 or 41.32.355 for a period of authorized leave from a community or technical college district, the earnable compensation allowable for calculation of average final compensation for periods of service authorized under this chapter shall be the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.)~~

(b) "Earnable compensation" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan I members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan I members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan I members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan I members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan I members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan II members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" means the time during which a member has been employed by an employer for compensation: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.



(30) "Average final compensation" for plan II members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan II members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan II on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan I" means the teachers' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan II" means the teachers' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

~~((40) "Education association" means an association organized to carry out collective bargaining activities, the majority of whose members are employees~~

~~covered by chapter 41.59 RCW or academic employees covered by chapter 28B.52 RCW.)~~

**Sec. 8.** RCW 41.40.010 and 1991 c 343 s 6 and 1991 c 35 s 70 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan I members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW as now or hereafter amended; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan II members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount

of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan I members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That if a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee.

(b) "Compensation earnable" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That in any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(i) The compensation earnable the member would have received had such member not served in the legislature; or

(ii) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under subparagraph (i) of this subsection is greater than compensation earnable under subparagraph (ii) of this subsection shall be paid by the member for both member and employer contributions.

(9)(a) "Service" for plan I members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system: PROVIDED FURTHER, That an individual shall receive no more than a total of twelve service credit months of service during any calendar year: PROVIDED FURTHER, That where an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(b) "Service" for plan II members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the

teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system.

A member shall receive a total of not more than twelve service credit months of service for such calendar year: PROVIDED, That when an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system: PROVIDED, That an amount equal to the employer and employee contributions which would have been paid to the retirement system on account of such service shall have been paid to the retirement system with interest (as computed by the department) on the employee's portion prior to retirement of such person, by the employee or his employer, except as qualified by RCW 41.40.023: PROVIDED FURTHER, That employer contributions plus employee contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employees' savings fund and be treated as any other contribution made by the employee, with the exception that the contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service,

except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

(17)(a) "Average final compensation" for plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.023.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

**NEW SECTION. Sec. 9.** This act applies on a retroactive basis to members for whom compensation and hours were reported under the circumstances described in sections 1 through 6 of this act. This act may also be applied on a retroactive basis to January 1, 1992, to members for whom compensation and hours would have been reported except for chapter 3, Laws of 1992, or explicit instructions from the department of retirement systems.

**NEW SECTION. Sec. 10.** The following acts or parts of acts are each repealed:

- (1) RCW 41.32.034 and 1992 c 3 s 1;
- (2) RCW 41.32.355 and 1992 c 3 s 2; and
- (3) 1992 c 3 s 4 (uncodified).

**NEW SECTION. Sec. 11.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 13, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

CHAPTER 96

[Engrossed Substitute House Bill 1672]

EYE CARE FOR THE HOMELESS PROGRAM

Effective Date: 7/25/93

AN ACT Relating to public health; adding new sections to chapter 43.20A RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that many homeless people in the state of Washington have impaired eyesight that reduces their chances of obtaining employment or training for employment. The legislature finds that it is in the public interest to facilitate ophthalmologists, optometrists, and opticians in providing free vision services to homeless people of the state.

NEW SECTION. Sec. 2. The secretary of the department of social and health services shall coordinate the efforts of nonprofit agencies working with the homeless, the Washington academy of eye physicians and surgeons, the Washington optometric association, and the opticians association of Washington to deliver vision services to the homeless free of charge. The secretary shall enter into agreements identifying cooperating agencies and the circumstances under which specified services will be delivered.

NEW SECTION. Sec. 3. To the extent consistent with the department's budget, the secretary shall pay for the eyeglasses hardware prescribed and dispensed pursuant to the program set up in sections 2 through 6 of this act. The secretary shall also attempt to obtain private sector funding for this program.

NEW SECTION. Sec. 4. Ophthalmologists, optometrists, and dispensing opticians may utilize used eyeglass frames obtained through donations to this program.

NEW SECTION. Sec. 5. An ophthalmologist, optometrist, or dispensing optician who provides:

(1) Free vision services; or

(2) Eyeglasses, or any part thereof, including used frames, at or below retail cost to homeless people in the state of Washington and who is not reimbursed for such services or eyeglasses as allowed for in section 6 of this act, is not liable for civil damages for injury to a homeless person resulting from any act or omission in providing such services or eyeglasses, other than an act or omission constituting gross negligence or intentional conduct.

NEW SECTION. Sec. 6. Nothing in sections 2 through 6 of this act shall prevent ophthalmologists, optometrists, or dispensing opticians from collecting for either their goods or services, or both from third-party payers covering the goods or services for homeless persons.

NEW SECTION. Sec. 7. The program created in sections 2 through 6 of this act shall be known as the eye care for the homeless program in Washington.



**NEW SECTION. Sec. 8.** Sections 2 through 7 of this act are each added to chapter 43.20A RCW.

Passed the House March 17, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 97

[Substitute House Bill 1707]

### MOTOR CARRIER REGISTRATION AND REGULATION REVISIONS

**Effective Date:** 7/25/93 - Except Sections 2, 3, & 7 which become effective on 1/1/94

AN ACT Relating to the registration and regulation of motor carriers and the collection of fees relating to motor carrier operations; amending RCW 81.80.318, 81.80.150, and 81.80.090; adding new sections to chapter 81.80 RCW; repealing RCW 81.80.300 and 81.80.320; and providing an effective date.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 81.80 RCW to read as follows:

The commission may implement a system to register motor carriers doing business in this state, including, but not limited to:

(1) The prescription of an identification number and the issuance of a receipt that must be carried within the cab of each motive power vehicle operated within this state;

(2) The adoption of requirements for the carriers to carry other identifying information along with the identification number provided for in subsection (1) of this section;

(3) Participation in a single state registration program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, 49 U.S.C. Sec. 11506, as in effect on the effective date of this act; and

(4) The collection of any fee authorized by the Intermodal Surface Transportation Efficiency Act, 49 U.S.C. Sec. 11506, as in effect on the effective date of this act, in addition to any other fees authorized by law.

**Sec. 2.** RCW 81.80.318 and 1985 c 7 s 153 are each amended to read as follows:

Any motor carrier engaged in this state in the casual or occasional carriage of property in interstate or foreign commerce, who would otherwise be subject to all of the requirements of this chapter, shall be authorized to engage in such casual or occasional carriage, upon securing from the commission a single trip transit permit, valid for a period not exceeding ten days, which shall authorize a one way trip in transporting property for compensation between points in the state of Washington and points in other states, territories, or foreign countries.

No identification (~~cab cards and decals or stamps or~~) numbers and no regulatory fees other than as provided in this section shall be required for such permit. The permit must be carried in the cab of the motive power vehicle.

The permit shall be issued upon application to the commission or any of its duly authorized agents upon payment of a fee of (~~ten~~) not more than twenty dollars and the furnishing of proof of possession of public liability and property damage insurance (~~in limits of at least twenty five thousand dollars, for injury or death of any one person, and subject to such limit as to any one person, for one hundred thousand dollars for injury or death of all persons caused by any one accident and for ten thousand dollars for all damages to property caused by one accident~~) at levels set by commission rule. Such proof may consist of an insurance policy or a certificate of insurance.

The commission shall not be required to collect the excise tax prescribed by RCW 82.44.020 on any vehicle subject only to the payment of this fee.

NEW SECTION. Sec. 3. A new section is added to chapter 81.80 RCW to read as follows:

In addition to all other fees to be paid, a common carrier and contract carrier shall pay a regulatory fee of no more than 0.0025 of its gross income from intrastate operations for the previous calendar year, or such other period as the commission designates by rule. The carrier shall pay the fee no later than four months after the end of the appropriate period and shall include with the payment such information as the commission requires by rule.

The legislature intends that the fees collected under this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject to this chapter, and to that end the commission may by general order decrease fees provided in this section if it determines that the moneys then in the motor carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating carriers.

All fees collected under any other provision of this chapter must be paid to the commission. The commission shall transmit the fees to the state treasurer within thirty days for deposit to the credit of the public service revolving fund.

Sec. 4. RCW 81.80.150 and 1981 c 116 s 2 are each amended to read as follows:

The commission shall make, fix, construct, compile, promulgate, publish, and distribute tariffs containing compilations of rates, charges, classifications, rules, and regulations to be used by all common carriers. In compiling such tariffs it shall include within any given tariff compilation such carriers, groups of carriers, commodities, or geographical areas as it determines shall be in the public interest. Such compilations and publications may be made by the commission by compiling the rates, charges, classifications, rules, and regulations now in effect, and as they may be amended and altered from time to time after notice and hearing, by issuing and distributing revised pages or supplements to such tariffs or reissues thereof in accordance with the orders of the commission:

PROVIDED, That the commission, upon good cause shown, may establish temporary rates, charges, or classification changes which may be made permanent only after publication in an applicable tariff for not less than sixty days, and determination by the commission thereafter that the rates, charges or classifications are just, fair, and reasonable: PROVIDED FURTHER, That temporary rates shall not be made permanent except upon notice and hearing if within sixty days from date of publication, a shipper or common carrier, or representative of either, shall file with the commission a protest alleging such temporary rates to be unjust, unfair, or unreasonable. For purposes of this proviso, the publication of temporary rates in the tariff shall be deemed adequate public notice. Nothing herein shall be construed to prevent the commission from proceeding on its own motion, upon notice and hearing, to fix and determine just, fair, and reasonable rates, charges, and classifications. Each common carrier shall purchase from the commission and post tariffs applicable to its authority. The commission shall set fees for sale of the tariffs, and supplements and corrections of them, at rates to cover all costs of making, fixing, constructing, compiling, promulgating, publishing, and distributing the tariffs. The proper tariff, or tariffs, applicable to a carrier's operations shall be available to the public at each agency and office of all common carriers operating within this state. Such compilations and publications shall be sold by the commission for ((a)) the established fee (~~(to be determined annually and not to exceed the cost of this service. Corrections to such publications shall be furnished to all subscribers to tariffs in the form of corrected pages to the tariffs, supplements, or reissues thereof. In addition to the initial charge for each tariff, the commission shall charge an annual maintenance fee not to exceed the cost of issuing corrections or supplements and mailing them to subscribers: PROVID- ED, That)).~~ However, copies may be furnished free to other regulatory bodies and departments of government and to colleges, schools, and libraries. All copies of the compilations, whether sold or given free, shall be issued and distributed under rules and regulations to be fixed by the commission: PROVIDED FURTHER, That the commission may by order authorize common carriers to publish and file tariffs with the commission and be governed thereby in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, construct, compile, publish, and distribute tariffs covering such commodities and services.

Sec. 5. RCW 81.80.090 and 1973 c 115 s 10 are each amended to read as follows:

The commission shall prescribe forms of application for permits and for extensions thereof for the use of prospective applicants, and for transfer of permits and for acquisition of control of carriers holding permits, and shall make regulations for the filing thereof. Any such application shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed ((two)) five hundred fifty dollars.

NEW SECTION. **Sec. 6.** A new section is added to chapter 81.80 RCW to read as follows:

If a person seeks to contest the imposition of a fee imposed under this chapter, the person shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

NEW SECTION. **Sec. 7.** The following acts or parts of acts are each repealed:

(1) RCW 81.80.300 and 1991 c 241 s 2, 1985 c 7 s 152, 1977 ex.s. c 63 s 1, 1971 ex.s. c 143 s 4, 1969 ex.s. c 210 s 13, 1967 c 170 s 1, & 1961 c 14 s 81.80.300; and

(2) RCW 81.80.320 and 1971 ex.s. c 143 s 5, 1969 ex.s. c 210 s 14, 1967 c 170 s 4, & 1961 c 14 s 81.80.320.

NEW SECTION. **Sec. 8.** Sections 2, 3, and 7 of this act take effect January 1, 1994.

Passed the House March 8, 1993.

Passed the Senate April 5, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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**CHAPTER 98**

[Substitute House Bill 1787]

**TRUST WATER RIGHTS PROGRAM EXTENDED STATE-WIDE**

**Effective Date:** 7/25/93

AN ACT Relating to water resource areas; and amending RCW 90.42.010, 90.42.030, 90.42.040, and 90.42.080.

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

**Sec. 1.** RCW 90.42.010 and 1991 c 347 s 5 are each amended to read as follows:

(1) The legislature finds that a need exists to develop and test a means to facilitate the voluntary transfer of water and water rights, including conserved water, to provide water for presently unmet needs and emerging needs. Further, the legislature finds that water conservation activities have the potential of affecting the quantity of return flow waters to which existing water right holders have a right to and rely upon. It is the intent of the legislature that persons holding rights to water, including return flows, not be adversely affected in the implementation of the provisions of this chapter.

~~((The purpose of this chapter is to provide the mechanism for accomplishing this in a manner that will not impair existing rights to water and to test the~~

mechanism in two pilot planning areas designated pursuant to RCW 90.54.045(2) and in the water resource inventory areas designated under subsection (2) of this section:

~~(2) The department may designate up to four water resource inventory areas west of the crest of the Cascade mountains and up to four water resource inventory areas east of the crest of the Cascade mountains, as identified pursuant to chapter 90.54 RCW. The areas designated shall contain critical water supply problems and shall provide an opportunity to test and evaluate a variety of applications of RCW 90.42.010 through 90.42.090, including application to municipal, industrial, and agricultural use. The department shall seek advice from appropriate state agencies, Indian tribes, local governments, representatives of water right holders, and interested parties before identifying such water resource inventory areas.~~

~~(3))~~ (2) The department shall provide to the appropriate legislative committees by December 31, 1993, a written evaluation of the implementation of RCW 90.42.010 through 90.42.090 and recommendations for future application.

**Sec. 2.** RCW 90.42.030 and 1991 c 347 s 7 are each amended to read as follows:

(1) For purposes of this chapter, the state may enter into contracts to provide moneys to assist in the financing of water conservation projects (~~located within pilot planning areas and in water resource inventory areas designated in accordance with RCW 90.42.010~~). In consideration for the financial assistance provided, the state shall obtain public benefits defined in guidelines developed under RCW 90.42.050.

(2) If the public benefits to be obtained require conveyance or modification of a water right, the recipient of funds shall convey to the state the recipient's interest in that part of the water right or claim constituting all or a portion of the resulting net water savings for deposit in the trust water rights program. The amount to be conveyed shall be finitely determined by the parties, in accordance with the guidelines developed under RCW 90.42.050, before the expenditure of state funds. Conveyance may consist of complete transfer, lease contracts, or other legally binding agreements. When negotiating for the acquisition of conserved water or net water savings, or a portion thereof, the state may require evidence of a valid water right.

(3) As part of the contract, the water right holder and the state shall specify the process to determine the amount of water the water right holder would continue to be entitled to once the water conservation project is in place.

(4) The state shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds provided by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.

(5) If water is proposed to be acquired by or conveyed to the state as a trust water right by an irrigation district, evidence of the district's authority to

represent the water right holders shall be submitted to and for the satisfaction of the department.

(6) The state shall not contract with any person to acquire a water right served by an irrigation district without the approval of the board of directors of the irrigation district. Disapproval by a board shall be factually based on probable adverse effects on the ability of the district to deliver water to other members or on maintenance of the financial integrity of the district.

**Sec. 3.** RCW 90.42.040 and 1991 c 347 s 8 are each amended to read as follows:

(1) All trust water rights acquired by the state shall be placed in the state trust water rights program to be managed by the department. Trust water rights acquired by the state shall be held or authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas, or to resolve critical water supply problems (~~in water resource inventory areas designated in accordance with RCW 90.42.010~~).

(2) The department shall issue a water right certificate in the name of the state of Washington for each permanent trust water right conveyed to the state indicating the reach or reaches of the stream, the quantity, and the use or uses to which it may be applied. A superseding certificate shall be issued that specifies the amount of water the water right holder would continue to be entitled to as a result of the water conservation project. The superseding certificate shall retain the same priority date as the original right. For nonpermanent conveyances, the department shall issue certificates or such other instruments as are necessary to reflect the changes in purpose or place of use or point of diversion or withdrawal. Water rights for which such nonpermanent conveyances are arranged shall not be subject to relinquishment for nonuse.

(3) A trust water right retains the same priority date as the water right from which it originated, but as between them the trust right shall be deemed to be inferior in priority unless otherwise specified by an agreement between the state and the party holding the original right.

(4) Exercise of a trust water right may be authorized only if the department first determines that neither water rights existing at the time the trust water right is established, nor the public interest will be impaired. If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.

(5) Before any trust water right is created or modified, the department shall, at a minimum, require that a notice be published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks. At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

(6) RCW 90.14.140 through 90.14.230 have no applicability to trust water rights held by the department under this chapter or exercised under this section.

(7) RCW 90.03.380 has no applicability to trust water rights acquired by the state through the funding of water conservation projects.

**Sec. 4.** RCW 90.42.080 and 1991 c 347 s 12 are each amended to read as follows:

(1) ~~((Within the pilot planning areas, and in water resource inventory areas designated in accordance with RCW 90.42.010,))~~ The state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights.

(2) The department may enter into leases, contracts, or such other arrangements with other persons or entities as appropriate, to ensure that trust water rights acquired in accordance with this chapter may be exercised to the fullest possible extent.

(3) Trust water rights may be acquired by the state on a temporary or permanent basis.

(4) The provisions of RCW 90.03.380 and 90.03.390 apply to transfers of water rights under this section.

(5) No funds may be expended for the purchase of water rights by the state pursuant to this section unless specifically appropriated for this purpose by the legislature.

Passed the House March 9, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 21, 1993.

Filed in Office of Secretary of State April 21, 1993.

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## CHAPTER 99

[Substitute House Bill 1977]

### ACREAGE EXPANSION PROGRAM PARTICIPATION REVISIONS

Effective Date: 7/25/93

AN ACT Relating to acreage expansion programs; and adding a new section to chapter 90.44 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 90.44 RCW to read as follows:

In any acreage expansion program adopted by the department as an element of a ground water management program, the authorization for a water right certificate holder to participate in the program shall be on an annual basis for the first two years. After the two-year period, the department may authorize participation for ten-year periods. The department may authorize participation

for ten-year periods for certificate holders who have already participated in an acreage expansion program for two years. The department may require annual certification that the certificate holder has complied with all requirements of the program. The department may terminate the authority of a certificate holder to participate in the program for one calendar year if the certificate holder fails to comply with the requirements of the program.

Passed the House March 11, 1993.  
Passed the Senate April 6, 1993.  
Approved by the Governor April 21, 1993.  
Filed in Office of Secretary of State April 21, 1993.

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**CHAPTER 100**

[Senate Bill 5125]

**COMMERCIAL SALMON FISHING LICENSE ISSUANCE**

Effective Date: 7/25/93

AN ACT Relating to commercial salmon fishing licenses; and amending RCW 75.30.120.

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

**Sec. 1.** RCW 75.30.120 and 1983 1st ex.s. c 46 s 146 are each amended to read as follows:

(1) A commercial salmon fishing license issued under RCW 75.28.110 or salmon delivery permit issued under RCW 75.28.113 may be issued only to a vessel((:

(a)) which held a state commercial salmon fishing license or salmon delivery permit during the previous year or had transferred to the vessel such a license, and has not subsequently transferred the license or permit to another vessel((; and

~~(b) From which food fish were caught and landed in this state or in another state during the previous year as documented by a valid fish receiving document)).~~

Where the failure to obtain the license or permit during the previous year was the result of a license or permit suspension, the vessel may qualify for a license or permit by establishing that the vessel held such a license or permit during the last year in which the license or permit was not suspended.

~~(2) ((The director may waive the landing requirement of subsection (1)(b) of this section if:~~

~~(a) The vessel to which an otherwise valid license is transferred has not had the opportunity to have caught and landed salmon; and~~

~~(b) The intent of the commercial salmon vessel limitation program established under this section is not violated.~~

~~(3))~~ Commercial salmon fishing licenses and salmon delivery permits are transferable.



Passed the Senate February 11, 1993.  
Passed the House April 5, 1993.  
Approved by the Governor April 23, 1993.  
Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 101**

[Senate Bill 5139]

**CONSOLIDATION OF STATE HISTORICAL SOCIETY AND  
STATE CAPITAL HISTORICAL ASSOCIATION****Effective Date: 7/1/93**

AN ACT Relating to consolidation of the state capital historical association and the Washington state historical society; amending RCW 27.34.010, 27.34.020, 27.34.040, 27.34.250, 27.34.900, and 43.03.028; creating new sections; repealing RCW 27.34.090; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds that:

(1) There is a strong community of interest between the Washington state historical society and the state capital historical association. This community of interest is expressed through many common goals, missions, and heritage programs, as well as a close geographic proximity between these two state historical agencies.

(2) The capacity to preserve our state's rich and diverse heritage and the unique political and cultural history of the state capital will be strengthened if the programs of both agencies are combined into a single, cohesive entity.

(3) In a time of limited state resources, operational efficiencies and savings can be achieved if the programs and personnel of both agencies are managed by a single entity.

It is, therefore, the purpose of this act to transfer the powers and duties of the state historical agency known as the state capital historical association to the Washington state historical society. However, it is the intent of the legislature that as the consolidation of these two agencies occurs, the unique missions and programs of the state capital historical association and the state capital historical museum be preserved.

**NEW SECTION. Sec. 2.** The state capital historical association is abolished and its powers, duties, and functions are transferred to the Washington state historical society.

**NEW SECTION. Sec. 3.** All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state capital historical association shall be delivered to the custody of the Washington state historical society. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state capital historical association shall be made available to the Washington state historical society. All funds, credits, or

other assets held by the state capital historical association shall be assigned to the Washington state historical society.

Any appropriations made to the state capital historical association shall, on the effective date of this act, be transferred and credited to the Washington state historical society.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

NEW SECTION. Sec. 4. All employees of the state capital historical association are transferred to the jurisdiction of the Washington state historical society. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state historical society to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

NEW SECTION. Sec. 5. All rules and all pending business before the state capital historical association shall be continued and acted upon by the Washington state historical society. All existing contracts and obligations shall remain in full force and shall be performed by the Washington state historical society.

NEW SECTION. Sec. 6. The transfer of the powers, duties, functions, and personnel of the state capital historical association shall not affect the validity of any act performed before the effective date of this act.

NEW SECTION. Sec. 7. If apportionments of budgeted funds are required because of the transfers directed by sections 3 through 6 of this act, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

NEW SECTION. Sec. 8. Nothing contained in sections 1 through 7 of this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

Sec. 9. RCW 27.34.010 and 1983 c 91 s 1 are each amended to read as follows:

The legislature finds that those articles and properties which illustrate the history of the state of Washington should be maintained and preserved for the use and benefit of the people of the state. It is the purpose of this chapter to designate the ~~((three))~~ two state historical societies as trustees of the state for these purposes, and to establish:

- (1) A comprehensive and consistent state-wide policy pertaining to archaeology, history, historic preservation, and other historical matters;
- (2) State-wide coordination of historical programs; and
- (3) A coordinated budget for all state historical agencies.

**Sec. 10.** RCW 27.34.020 and 1986 c 266 s 9 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- (1) "Advisory council" means the advisory council on historic preservation.
- (2) "Department" means the department of community development.
- (3) "Director" means the director of community development.
- (4) "Federal act" means the national historic preservation act of 1966 (Public Law 89-655; 80 Stat. 915).

(5) "Heritage council" means the Washington state heritage council.

(6) "Historic preservation" includes the protection, rehabilitation, restoration, identification, scientific excavation, and reconstruction of districts, sites, buildings, structures, and objects significant in American and Washington state history, architecture, archaeology, or culture.

(7) "Office" means the office of archaeology and historic preservation within the department of community development.

(8) "Preservation officer" means the state historic preservation officer as provided for in RCW 27.34.210.

(9) "Project" means programs leading to the preservation for public benefit of historical properties, whether by state and local governments or other public bodies, or private organizations or individuals, including the acquisition of title or interests in, and the development of, any district, site, building, structure, or object that is significant in American and Washington state history, architecture, archaeology, or culture, and property used in connection therewith, or for its development.

(10) "State historical agencies" means the state historical societies and the office of archaeology and historic preservation within the department of community development.

(11) "State historical societies" means the Washington state historical society(✓) and the eastern Washington state historical society(~~(-and the state capital historical association)~~).

(12) "Cultural resource management plan" means a comprehensive plan which identifies and organizes information on the state of Washington's historic, archaeological, and architectural resources into a set of management criteria, and which is to be used for producing reliable decisions, recommendations, and advice relative to the identification, evaluation, and protection of these resources.

**Sec. 11.** RCW 27.34.040 and 1983 c 91 s 4 are each amended to read as follows:

The heritage council shall consist of:

(1) A member of the Washington state historical society nominated by the governing board of the society and confirmed by the governor;

(2) A member of the eastern Washington state historical society nominated by the governing board of the society and confirmed by the governor;

(3) ~~((A member of the state capital historical association nominated by the governing board of the association and confirmed by the governor;~~

(4)) The secretary of state; and

~~((5))~~ (4) Five persons appointed by the governor who are experienced and knowledgeable in historical and archaeological matters.

The council shall elect a chairperson from among its members. The secretary of state shall serve as an ex officio member of the council. The remaining council members shall serve four-year terms except initial members whose terms shall be as follows: Two members appointed for four years, two members appointed for three years, two members appointed for two years, and two members appointed for one year. Any vacancies shall be filled in the same manner as the original appointments for the balance of the unexpired term. The secretary of state shall serve on the council without additional compensation. All other council members shall serve without compensation but shall be reimbursed for travel expenses incurred in the performance of the duties of the council as provided in RCW 43.03.050 and 43.03.060. The council shall meet at least once a quarter and at the call of the chairperson. Five members of the council shall constitute a quorum.

**Sec. 12.** RCW 27.34.250 and 1983 c 91 s 15 are each amended to read as follows:

(1) There is hereby established an advisory council on historic preservation, which shall be composed of nine members appointed by the governor as follows:

(a) The director of a state historical society or the director's designee to be selected from (i) the director of the Washington state historical society~~((;))~~ and (ii) the director of the Eastern Washington state historical society, ~~((and (iii) the director of the state capital historical society,))~~ to each serve on the council for one year on a rotating basis, the order of rotation to be determined by the governor;

(b) Six members of the public who are interested and experienced in matters to be considered by the council including the fields of history, architecture, and archaeology;

(c) The director of the Washington archaeological research center or the director's designee; and

(d) A native American.

(2) Each member of the council appointed under subsection (1)(b) and (d) of this section shall serve a four-year term, except that those members first appointed shall serve for terms of from one to four years as designated by the governor at the time of appointment, it being the purpose of this subsection to assure staggered terms of office.

(3) A vacancy in the council shall not affect its powers, but shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(4) The chairperson of the council shall be designated by the governor.

(5) Five members of the council shall constitute a quorum.

(6) The council shall cease to exist on June 30, 1993, unless extended by law for an additional fixed period of time.

**Sec. 13.** RCW 27.34.900 and 1981 c 253 s 3 are each amended to read as follows:

The building and grounds designated as Block 2, Grainger's Addition to the City of Olympia, County of Thurston, acquired by the state under senate joint resolution No. 18, session of 1939, is hereby designated a part of the state capitol, to be known as the state (~~capitol~~) capital historical museum. This structure is to be used to house and interpret the collection of the (~~association~~) Washington state historical society. This section does not limit the (~~association's~~) society's use of other structures.

**Sec. 14.** RCW 43.03.028 and 1991 c 3 s 294 are each amended to read as follows:

(1) There is hereby created a state committee on agency officials' salaries to consist of seven members, or their designees, as follows: The president of the University of Puget Sound; the chairperson of the council of presidents of the state's four-year institutions of higher education; the chairperson of the State Personnel Board; the president of the Association of Washington Business; the president of the Pacific Northwest Personnel Managers' Association; the president of the Washington State Bar Association; and the president of the Washington State Labor Council. If any of the titles or positions mentioned in this subsection are changed or abolished, any person occupying an equivalent or like position shall be qualified for appointment by the governor to membership upon the committee.

(2) The committee shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the board of pharmacy; (~~the capitol historical association and museum;~~) the eastern Washington historical society; the Washington state historical society; the interagency committee for outdoor recreation; the criminal justice training commission; the department of personnel; the state finance committee; the state library; the traffic safety commission; the horse racing commission; the advisory council on vocational education; the public disclosure commission; the state conservation commission; the commission on Hispanic affairs; the commission on Asian-American affairs; the state board for volunteer fire fighters; the transportation improvement board; the public (~~employees~~) employment relations

commission; the forest practices appeals board; and the energy facilities site evaluation council.

The committee shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position.

(3) Committee members shall be reimbursed by the department of personnel for travel expenses under RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 15. RCW 27.34.090 and 1991 sp.s. c 13 s 36, 1985 c 57 s 7, & 1983 c 91 s 9 are each repealed.

NEW SECTION. Sec. 16. 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. 17. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 4, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 102**

[Senate Bill 5426]

**OVERWEIGHT PERMIT FEES FOR TRUCKS**

**Effective Date: 7/25/93**

AN ACT Relating to overweight permits for trucks; amending RCW 46.16.070, 46.16.160, 46.44.0941, 46.44.095, 46.44.096, and 46.68.035; reenacting and amending RCW 46.44.041; and repealing RCW 46.44.160.

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

**Sec. 1.** RCW 46.16.070 and 1990 c 42 s 105 are each amended to read as follows:

(1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the excise tax prescribed in chapter 82.44 RCW and the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight thereof pursuant to

the provisions of chapter 46.44 RCW, the following licensing fees by such gross weight:

4,000 lbs. ....	\$ 37.00
6,000 lbs. ....	\$ 44.00
8,000 lbs. ....	\$ 55.00
10,000 lbs. ....	\$ 62.00
12,000 lbs. ....	\$ 72.00
14,000 lbs. ....	\$ 82.00
16,000 lbs. ....	\$ 92.00
18,000 lbs. ....	\$ 137.00
20,000 lbs. ....	\$ 152.00
22,000 lbs. ....	\$ 164.00
24,000 lbs. ....	\$ 177.00
26,000 lbs. ....	\$ 187.00
28,000 lbs. ....	\$ 220.00
30,000 lbs. ....	\$ 253.00
32,000 lbs. ....	\$ 304.00
34,000 lbs. ....	\$ 323.00
36,000 lbs. ....	\$ 350.00
38,000 lbs. ....	\$ 384.00
40,000 lbs. ....	\$ 439.00
42,000 lbs. ....	\$ 456.00
44,000 lbs. ....	\$ 466.00
46,000 lbs. ....	\$ 501.00
48,000 lbs. ....	\$ 522.00
50,000 lbs. ....	\$ 566.00
52,000 lbs. ....	\$ 595.00
54,000 lbs. ....	\$ 642.00
56,000 lbs. ....	\$ 677.00
58,000 lbs. ....	\$ 704.00
60,000 lbs. ....	\$ 750.00
62,000 lbs. ....	\$ 804.00
64,000 lbs. ....	\$ 822.00
66,000 lbs. ....	\$ 915.00
68,000 lbs. ....	\$ 954.00
70,000 lbs. ....	\$1,027.00
72,000 lbs. ....	\$1,098.00
74,000 lbs. ....	\$1,193.00
76,000 lbs. ....	\$1,289.00
78,000 lbs. ....	\$1,407.00
80,000 lbs. ....	\$1,518.00
<u>82,000 lbs. ....</u>	<u>\$1,623.00</u>
<u>84,000 lbs. ....</u>	<u>\$1,728.00</u>
<u>86,000 lbs. ....</u>	<u>\$1,833.00</u>

88,000 lbs. ....	\$1,938.00
90,000 lbs. ....	\$2,043.00
92,000 lbs. ....	\$2,148.00
94,000 lbs. ....	\$2,253.00
96,000 lbs. ....	\$2,358.00
98,000 lbs. ....	\$2,463.00
100,000 lbs. ....	\$2,568.00
102,000 lbs. ....	\$2,673.00
104,000 lbs. ....	\$2,778.00
105,500 lbs. ....	\$2,883.00

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

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

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035.

**Sec. 2.** RCW 46.16.160 and 1987 c 244 s 6 are each amended to read as follows:

(1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits may also be issued for movement of mobile homes pursuant to RCW 46.44.170. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135



shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(3) Vehicles operating under authority of trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) Blank trip permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. For each permit issued, there shall be collected a filing fee as provided by RCW 46.01.140, an administrative fee of eight dollars, and an excise tax of one dollar. If the filing fee amount of one dollar prescribed by RCW 46.01.140 is increased or decreased after January 1, 1981, the administrative fee shall be adjusted to compensate for such change to insure that the total amount collected for the filing fee, administrative fee, and excise tax remain at ten dollars. These fees and taxes are in lieu of all other vehicle license fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) A violation of or a failure to comply with any provision of this section is a gross misdemeanor.

(8) The department of licensing may adopt rules as it deems necessary to administer this section.

(9) All administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW 46.01.140.

**Sec. 3.** RCW 46.44.041 and 1988 c 229 s 1 and 1988 c 6 s 2 are each reenacted and amended to read as follows:

No vehicle or combination of vehicles shall operate upon the public highways of this state with a gross load on any single axle in excess of twenty thousand pounds, or upon any group of axles in excess of that set forth in the following table, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each, if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

Distance in feet between the ex- tremes of any group of 2 or more consecu- tive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles								
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles	
4	34,000								
5	34,000								
6	34,000								
7	34,000								
8	34,000	42,000							
9	39,000	42,500							
10	40,000	43,500							
11		44,000							
12		45,000	50,000						
13		45,500	50,500						
14		46,500	51,500						
15		47,000	52,000						
16		48,000	52,500	<del>((52,500))</del>					
				<u>58,000</u>					
17		48,500	53,500	<del>((53,500))</del>					
				<u>58,500</u>					
18		49,500	54,000	<del>((54,000))</del>					
				<u>59,000</u>					
19		50,000	54,500	<del>((54,500))</del>					
				<u>60,000</u>					

20	51,000	55,500	<del>((55,500))</del>	<u>60,500</u>	<u>66,000</u>		
21	51,500	56,000	<del>((56,000))</del>	<u>61,000</u>	<u>66,500</u>		
22	52,500	56,500	<del>((56,500))</del>	<u>61,500</u>	<u>67,000</u>		
23	53,000	57,500	<del>((57,500))</del>	<u>62,500</u>	<u>68,000</u>		
24	54,000	58,000	<del>((58,000))</del>	<u>63,000</u>	<u>68,500</u>	<u>74,000</u>	
25	54,500	58,500	<del>((58,500))</del>	<u>63,500</u>	<u>69,000</u>	<u>74,500</u>	
26	55,500	59,500	<del>((59,500))</del>	<u>64,000</u>	<u>69,500</u>	<u>75,000</u>	
27	56,000	60,000	<del>((60,000))</del>	<u>65,000</u>	<u>70,000</u>	<u>75,500</u>	
28	57,000	60,500	<del>((61,000-61,000))</del>	<u>65,500</u>	<u>71,000</u>	<u>76,500</u>	<u>82,000</u>
29	57,500	61,500	<del>((62,000-62,000))</del>	<u>66,000</u>	<u>71,500</u>	<u>77,000</u>	<u>82,500</u>
30	58,500	62,000	<del>((63,000-63,000))</del>	<u>66,500</u>	<u>72,000</u>	<u>77,500</u>	<u>83,000</u>
31	59,000	62,500	<del>((64,000-64,500))</del>	<u>67,500</u>	<u>72,500</u>	<u>78,000</u>	<u>83,500</u>
32	60,000	63,500	<del>((65,000-65,000))</del>	<u>68,000</u>	<u>73,000</u>	<u>78,500</u>	<u>84,500</u>
33		64,000	<del>((66,000-66,000))</del>	<u>68,500</u>	<u>74,000</u>	<u>79,000</u>	<u>85,000</u>
34		64,500	<del>((67,000-67,000))</del>	<u>69,000</u>	<u>74,500</u>	<u>80,000</u>	<u>85,500</u>
35		65,500	<del>((68,000-68,000))</del>	<u>70,000</u>	<u>75,000</u>	<u>80,500</u>	<u>86,000</u>
36		66,000	<del>((69,500-69,500))</del>	<u>70,500</u>	<u>75,500</u>	<u>81,000</u>	<u>86,500</u>
37		66,500	<del>((70,500-70,500))</del>	<u>71,000</u>	<u>76,000</u>	<u>81,500</u>	<u>87,000</u>
38		67,500	<del>((72,000-72,000))</del>	<u>71,500</u>	<u>77,000</u>	<u>82,000</u>	<u>87,500</u>
39		68,000	72,500	<del>((72,500))</del>	<u>77,000</u>	<u>82,500</u>	<u>88,500</u>
40		68,500	73,000	<del>((73,000))</del>	<u>78,000</u>	<u>83,500</u>	<u>89,000</u>
41		69,500	73,500	<del>((73,500))</del>	<u>78,500</u>	<u>84,000</u>	<u>89,500</u>

42	70,000 74,000 ( <del>(74,000)</del> )	<u>79,000</u> <u>84,500</u> <u>90,000</u> <u>95,500</u>
43	70,500 75,000 ( <del>(75,000)</del> )	<u>80,000</u> <u>85,000</u> <u>90,500</u> <u>96,000</u>
44	71,500 75,500 ( <del>(75,500)</del> )	<u>80,500</u> <u>85,500</u> <u>91,000</u> <u>96,500</u>
45	72,000 76,000 ( <del>(76,000)</del> )	<u>81,000</u> <u>86,000</u> <u>91,500</u> <u>97,500</u>
46	72,500 76,500 ( <del>(80,000—80,000)</del> )	<u>81,500</u> <u>87,000</u> <u>92,500</u> <u>98,000</u>
47	73,500 ( <del>(77,000—81,000—81,000)</del> )	<u>77,500</u> <u>82,000</u> <u>87,500</u> <u>93,000</u> <u>98,500</u>
48	74,000 78,000 ( <del>(82,000—82,000)</del> )	<u>83,000</u> <u>88,000</u> <u>93,500</u> <u>99,000</u>
49	74,500 78,500 ( <del>(83,000—83,000)</del> )	<u>83,500</u> <u>88,500</u> <u>94,000</u> <u>99,500</u>
50	75,500 79,000 84,000 ( <del>(84,000)</del> )	<u>89,000</u> <u>94,500</u> <u>100,000</u>
51	76,000 80,000 84,500 ( <del>(85,000)</del> )	<u>89,500</u> <u>95,000</u> <u>100,500</u>
52	76,500 80,500 85,000 ( <del>(86,000)</del> )	<u>90,500</u> <u>95,500</u> <u>101,000</u>
53	77,500 81,000 86,000 ( <del>(87,000)</del> )	<u>91,000</u> <u>96,500</u> <u>102,000</u>
54	78,000 81,500 86,500 ( <del>(88,000—91,000—91,000)</del> )	<u>91,500</u> <u>97,000</u> <u>102,500</u>
55	78,500 82,500 87,000 ( <del>(89,000—92,000—92,000)</del> )	<u>92,000</u> <u>97,500</u> <u>103,000</u>
56	79,500 83,000 87,500 ( <del>(90,000—93,000—93,000)</del> )	<u>92,500</u> <u>98,000</u> <u>103,500</u>
57	80,000 83,500 88,000 ( <del>(91,000—94,000—94,000)</del> )	<u>93,000</u> <u>98,500</u> <u>104,000</u>
58	( <del>(84,000—89,000—92,000—95,000—95,000)</del> )	<u>84,000</u> <u>89,000</u> <u>94,000</u> <u>99,000</u> <u>104,500</u>
59	( <del>(85,000—89,500—93,500—96,000—96,000)</del> )	<u>85,000</u> <u>89,000</u> <u>94,500</u> <u>99,500</u> <u>105,500</u>
60	85,500 90,000 95,000 ( <del>(97,000—97,000)</del> )	<u>100,500</u> <u>105,500</u>
61	86,000 90,500 95,500 ( <del>(98,000—98,000)</del> )	<u>101,000</u> <u>105,500</u>
62	( <del>(87,000)</del> ) 91,000 96,000 ( <del>(99,000—99,000)</del> )	<u>86,500</u> <u>101,500</u> <u>105,500</u>
63	87,500 92,000 ( <del>(97,000—100,000—100,000)</del> )	<u>96,500</u> <u>102,000</u> <u>105,500</u>

64	88,000	92,500	97,500	<del>((101,000-101,000))</del> <u>102,500</u>	<u>105,500</u>
65	88,500	93,000	98,000	<del>((102,000-102,000))</del> <u>103,000</u>	<u>105,500</u>
66	89,500	93,500	98,500	<del>((103,000-103,000))</del> <u>103,500</u>	<u>105,500</u>
67	90,000	94,000	99,000	<del>((104,000-104,000))</del> <u>104,500</u>	<u>105,500</u>
68	90,500	95,000	99,500	105,000	<del>((105,000))</del> <u>105,500</u>
69	91,000	95,500	100,000	105,500	105,500
70	92,000	96,000	101,000	105,500	105,500

When inches are involved: Under six inches take lower, six inches or over take higher. The maximum load on any axle in any group of axles shall not exceed the single axle or tandem axle allowance as set forth in the table above.

The maximum axle and gross weights specified in this section are subject to the braking requirements set up for the service brakes upon any motor vehicle or combination of vehicles as provided by law.

~~((It is unlawful to operate upon the public highways any single unit vehicle, supported upon three axles or more with a gross weight including load in excess of forty thousand pounds or any combination of vehicles having a gross weight in excess of eighty thousand pounds without first obtaining an additional tonnage permit as provided for in RCW 46.44.095: PROVIDED, That when a combination of vehicles has purchased license tonnage in excess of seventy two thousand pounds as provided by RCW 46.16.070, such excess license tonnage may be applied to the power unit subject to limitations of RCW 46.44.042 and this section when such vehicle is operated without a trailer.))~~

It is unlawful to operate any vehicle upon the public highways equipped with two axles spaced less than seven feet apart unless the two axles are so constructed and mounted that the difference in weight between the axles does not exceed three thousand pounds. However, variable lift axles are exempt from this requirement. For purposes of this section, a "variable lift axle" is an axle that may be lifted from the roadway surface, whether by air, hydraulic, mechanical, or any combination of these means. The weight allowed on the axle is governed by RCW 46.44.042 and this section.

Loads of not more than eighty thousand pounds which may be legally hauled in the state bordering this state which also has a sales tax, are legal in this state when moving to a port district within four miles of the bordering state except on the interstate system. This provision does not allow the operation of a vehicle combination consisting of a truck tractor and three trailers.

Notwithstanding anything contained herein, a vehicle or combination of vehicles in operation on January 4, 1975, may operate upon the public highways of this state, including the interstate system within the meaning of section 127 of Title 23, United States Code, with an overall gross weight upon a group of

two consecutive sets of dual axles which was lawful in this state under the laws, regulations, and procedures in effect in this state on January 4, 1975.

Sec. 4. RCW 46.44.0941 and 1990 c 42 s 107 are each amended to read as follows:

The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

All overlegal loads, except overweight, single trip . . . . .	\$ 10.00
Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days . . . . .	\$ 20.00
Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days . . . . .	\$ 10.00
Continuous operation of a combination of vehicles having one trailing unit that exceeds forty-eight feet and is not more than fifty-six feet in length, for a period of one year . . . . .	\$ 100.00
Continuous operation of a combination of vehicles having two trailing units which together exceed <u>sixty-one</u> feet and are not more than sixty-eight feet in length, for a period of one year . . . . .	\$ 100.00
Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days . . . . .	\$ 70.00
<u>Continuous operation of a four-axle fixed load vehicle meeting the requirements of RCW 46.44.091(1) and weighing less than 86,000 pounds gross weight, not to exceed thirty days . . . . .</u>	<u>\$ 90.00</u>
Continuous operation of overlegal loads having nonreducible features not to exceed eighty-five feet in length and fourteen feet in width, for a period of one year . . . . .	\$ 150.00
<u>Continuous operation of a two or three-axle collection truck, actually engaged in the</u>	

collection of solid waste or recyclables, or both, under chapter 81.77 or 35.21 RCW or by contract under RCW 36.58.090, for one year with an additional six thousand pounds more than the weight authorized in RCW 46.16.070 on the rear axle of a two-axle truck or eight thousand pounds for the tandem axles of a three-axle truck. RCW 46.44.041 and 46.44.091 notwithstanding, the tire limits specified in RCW 46.44.042 apply, but none of the excess weight is valid or may be permitted on any part of the federal interstate highway system . . . . . \$ 42.00  
per thousand pounds

The department may issue any of the above-listed permits that involve height, length, or width for an expanded period of consecutive months, not to exceed one year.

Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:

- (1) Farmers in the course of farming activities, for any three-month period . . . . . \$ 10.00
- (2) Farmers in the course of farming activities, for a period not to exceed one year . . . . . \$ 25.00
- (3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period . . . . . \$ 25.00
- (4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year . . . . . \$ 100.00

Overweight Fee Schedule

<del>Weight over total registered gross weight ((plus additional gross weight purchased under RCW 46.44.095 or 46.44.047, or any other statute authorizing the state department of transportation to issue annual overweight permits)).</del>	Fee per mile on state highways
<del>1-5,999 pounds . . . . .</del>	<del>\$ .07</del>
<del>6,000-11,999 pounds . . . . .</del>	<del>\$ .14</del>
<del>12,000-17,999 pounds . . . . .</del>	<del>\$ .21</del>

18,000-23,999 pounds	\$ .35
24,000-29,999 pounds	\$ .49
30,000-35,999 pounds	\$ .63
36,000-41,999 pounds	\$ .84
42,000-47,999 pounds	\$ 1.05
48,000-53,999 pounds	\$ 1.26
54,000-59,999 pounds	\$ 1.47
60,000-65,999 pounds	\$ 1.68
66,000-71,999 pounds	\$ 2.03
72,000-79,999 pounds	\$ 2.38
80,000 pounds or more	\$ 2.80

PROVIDED: (a) The minimum fee for any overweight permit shall be \$14.00, (b) the fee for issuance of a duplicate permit shall be \$14.00, (c) when computing overweight fees prescribed in this section or in RCW 46.44.095 that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under.

The fees levied in this section and RCW 46.44.095 do not apply to vehicles owned and operated by the state of Washington, a county within the state, a city or town or metropolitan municipal corporation within the state, or the federal government.

Sec. 5. RCW 46.44.095 and 1990 c 42 s 108 are each amended to read as follows:

~~(When a combination of vehicles has been lawfully licensed to a total gross weight of eighty thousand pounds and when a three or more axle single unit vehicle has been lawfully licensed to a total gross weight of forty thousand pounds pursuant to provisions of RCW 46.44.041, a permit for additional gross weight may be issued by the department of transportation upon the payment of fifty two dollars and fifty cents per year for each one thousand pounds or fraction thereof of such additional gross weight: PROVIDED, That the tire limits specified in RCW 46.44.042 shall apply, and the gross weight on any single axle shall not exceed twenty thousand pounds, and the gross load on any group of axles shall not exceed the limits set forth in RCW 46.44.041: PROVIDED FURTHER, That within the tire limits of RCW 46.44.042, and notwithstanding RCW 46.44.041 and 46.44.091, a permit for an additional six thousand pounds may be purchased for the rear axles of a two axle garbage truck or eight thousand pounds for the tandem axle of a three axle garbage truck at a rate not to exceed forty two dollars per thousand. Such additional weight in the case of garbage trucks shall not be valid or permitted on any part of the federal interstate highway system.~~

~~The annual additional tonnage permits provided for in this section shall be issued upon such terms and conditions as may be prescribed by the department pursuant to general rules adopted by the transportation commission. Such~~



~~permits shall entitle the permittee to carry such additional load in an amount and upon highways or sections of highways as may be determined by the department of transportation to be capable of withstanding increased gross load without undue injury to the highway: PROVIDED, That the permits are not valid on any highway where the use of such permits would deprive this state of federal funds for highway purposes.~~

~~For those vehicles registered under chapter 46.87 RCW, the annual additional tonnage permits provided for in this section may be issued to coincide with the registration year of the base jurisdiction. For those vehicles registered under chapter 46.16 RCW and whose registration has staggered renewal dates, the annual additional tonnage permits may be issued to coincide with the expiration date of the registration. The permits may be purchased at any time, and if they are purchased for less than a full year, the fee shall be one twelfth of the full fee multiplied by the number of months, including any fraction thereof, covered by the permit. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit from one vehicle to another a fee of fourteen dollars shall be charged for each duplicate issued or each transfer. The department of transportation shall issue permits on a temporary basis for periods not less than five days at two dollars and eighty cents per day for each two thousands pounds or fraction thereof.~~

~~The fees levied in RCW 46.44.0941 and this section shall not apply to any vehicles owned and operated by the state of Washington, any county within the state, or any city or town or metropolitan municipal corporation within the state, or by the federal government.~~

~~In the case of fleets prorating license fees under the provisions of chapter 46.87 RCW, the fees provided for in this section shall be computed by the department of transportation by applying the proportion of the Washington mileage of the fleet in question to the total mileage of the fleet as reported pursuant to chapter 46.87 RCW to the fees that would be required to purchase the additional weight allowance for all eligible vehicles or combinations of vehicles for which the extra weight allowance is requested.~~

~~When computing fees that result in an amount other than full dollars, the fee shall be increased to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty nine cents or under. The minimum fee for any prorated tonnage permit issued under this section shall be thirty five dollars:))~~

When a combination of vehicles has been licensed to a total gross weight of 80,000 pounds or when a three or more axle single unit vehicle has been licensed to a total gross weight of 40,000 pounds, a temporary additional tonnage permit to haul loads in excess of these limits may be issued. This permit is valid for periods of not less than five days at two dollars and eighty cents per day for each two thousand pounds or fraction thereof. The fee may not be prorated. The permits shall authorize the movement of loads not exceeding the weight limits set forth in RCW 46.44.041 and 46.44.042.

**Sec. 6.** RCW 46.44.096 and 1989 c 398 s 4 are each amended to read as follows:

In determining fees according to RCW 46.44.0941, mileage on state primary and secondary highways shall be determined from the planning survey records of the department of transportation, and the gross weight of the vehicle or vehicles, including load, shall be declared by the applicant. Overweight on which fees shall be paid will be gross loadings in excess of loadings authorized by law or axle loadings in excess of loadings authorized by law, whichever is the greater. Loads which are overweight and oversize shall be charged the fee for the overweight permit without additional fees being assessed for the oversize features.

Special permits issued under RCW 46.44.047, 46.44.0941, or 46.44.095, may be obtained from offices of the department of transportation, ports of entry, or other agents appointed by the department.

The department may appoint agents for the purposes of selling special motor vehicle permits, temporary additional tonnage permits, and log tolerance permits. Agents so appointed may retain three dollars and fifty cents for each permit sold to defray expenses incurred in handling and selling the permits. If the fee is collected by the department of transportation, the department shall certify the fee so collected to the state treasurer for deposit to the credit of the motor vehicle fund.

Fees established in RCW 46.44.0941 shall be paid to the political body issuing the permit if the entire movement is to be confined to roads, streets, or highways for which that political body is responsible. When a movement involves a combination of state highways, county roads, and/or city streets the fee shall be paid to the state department of transportation. When a movement is confined within the city limits of a city or town upon city streets, including routes of state highways on city streets, all fees shall be paid to the city or town involved. A permit will not be required from city or town authorities for a move involving a combination of city or town streets and state highways when the move through a city or town is being confined to the route of the state highway. When a move involves a combination of county roads and city streets the fee shall be paid to the county authorities, but the fee shall not be collected nor the county permit issued until valid permits are presented showing the city or town authorities approve of the move in question. When the movement involves only county roads the fees collected shall be paid to the county involved. Fees established shall be paid to the political body issuing the permit if the entire use of the vehicle during the period covered by the permit shall be confined to the roads, streets, or highways for which that political body is responsible.

~~(If, pursuant to RCW 46.44.090, cities or counties issue additional tonnage permits similar to those provided for issuance by the state department of transportation in RCW 46.44.095, the state department of transportation shall authorize the use of the additional tonnage permits on state highways subject to the following conditions:~~

~~(1) The owner of the vehicle covered by such permit shall establish to the satisfaction of the state department of transportation that the primary use of the vehicle is on the streets or roads of the city or county issuing the additional tonnage permit;~~

~~(2) That the fees paid for the additional tonnage are not less than those established in RCW 46.44.095;~~

~~(3) That the city or county issuing the permit shall allow the use of permits issued by the state pursuant to RCW 46.44.095 on the streets or roads under its jurisdiction;~~

~~(4) That all of the provisions of RCW 46.44.042 and 46.44.041 shall be observed.~~

When the department of transportation is satisfied that the above conditions have been met, the department of transportation, by suitable endorsement on the permit, shall authorize its use on such highways as the department has authorized for such permits pursuant to RCW 46.44.095, and all such use of such highways is subject to whatever rules and regulations the state department of transportation has adopted for the permits.))

Sec. 7. RCW 46.68.035 and 1990 c 42 s 106 are each amended to read as follows:

All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) The sum of two dollars for each vehicle shall be deposited into the highway safety fund, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(2) The remainder shall be distributed as follows:

(a) ~~((25.862))~~ 23.677 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) ~~((1.661))~~ 1.521 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund; and

(c) The remaining proceeds shall be deposited into the motor vehicle fund.

NEW SECTION. Sec. 8. RCW 46.44.160 and 1988 c 55 s 2, 1981 c 229 s 1, 1975-'76 2nd ex.s. c 64 s 21, & 1975 1st ex.s. c 196 s 1 are each repealed.

Passed the Senate February 16, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

CHAPTER 103

[Engrossed Senate Bill 5427]

AXLE AND TIRE WEIGHT RESTRICTIONS

Effective Date: 7/25/93

AN ACT Relating to maximum gross weight tire factors; and amending RCW 46.44.042.

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

Sec. 1. RCW 46.44.042 and 1985 c 351 s 4 are each amended to read as follows:

Subject to the maximum gross weights specified in RCW 46.44.041, it is unlawful to operate any vehicle upon the public highways with a gross weight, including load, upon any tire concentrated upon the surface of the highway in excess of six hundred pounds per inch width of such tire. Other than the nonliftable steering axle on the power unit or tiller axle on fire fighting apparatus, an axle manufactured after July 31, 1993, carrying more than ten thousand pounds gross weight must be equipped with four or more tires. Effective January 1, 1997, an axle, excluding the nonliftable steering axle on the power unit or tiller axle on fire fighting apparatus, carrying more than ten thousand pounds gross weight must have four or more tires, regardless of date of manufacture. Instead of the four or more tires per axle requirements of this section: (1) An axle may be equipped with two tires limited to five hundred pounds per inch width of tire; or (2) in the case of a ready-mix concrete transit truck, the rear booster trailing axle may be equipped with two tires limited to six hundred pounds per inch width of tire. This section does not apply to oversize and overweight permits issued under RCW 46.44.090. For the purpose of this section, the width of tire in case of solid rubber or hollow center cushion tires, so long as the use thereof may be permitted by the law, shall be measured between the flanges of the rim. For the purpose of this section, the width of tires in case of pneumatic tires shall be the maximum overall normal inflated width as stipulated by the manufacturer when inflated to the pressure specified and without load thereon.

The department of transportation, under rules adopted by the transportation commission with respect to state highways, and a local authority, with respect to a public highway under its jurisdiction, may extend the weight table in RCW 46.44.041 to one hundred fifteen thousand pounds. However, the extension must be in compliance with federal law, and vehicles operating under the extension must be in full compliance with the 1997 axle and tire requirements under this section.

- Passed the Senate February 11, 1993.
- Passed the House April 8, 1993.
- Approved by the Governor April 23, 1993.
- Filed in Office of Secretary of State April 23, 1993.

## CHAPTER 104

[Substitute Senate Bill 5678]

## DOMESTIC WINERIES EXEMPTED FROM COMMISSION MERCHANT REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to exempting domestic wineries from chapter 20.01 RCW; and reenacting and amending RCW 20.01.030.

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

**Sec. 1.** RCW 20.01.030 and 1989 c 354 s 38 and 1989 c 307 s 37 are each reenacted and amended to read as follows:

This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder;

(11) Any domestic winery, as defined in RCW 66.04.010, licensed under Title 66 RCW, with respect to its transactions involving agricultural products used by the domestic winery in making wine.

Passed the Senate March 8, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

**CHAPTER 105**

[Senate Bill 5082]

**RATITES DEFINED AS POULTRY**

**Effective Date:** 7/25/93

AN ACT Relating to poultry farming; amending RCW 16.57.010; adding a new section to chapter 16.57 RCW; adding a new section to chapter 16.36 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that ratites have been raised for commercial purposes on farms in the United States for over sixty years and have been raised elsewhere for over one hundred twenty years.

In recognition that ratite farming is an agricultural pursuit, the purpose of this act is to assure that the regulatory mechanisms regarding animal health and ownership identification are in place.

**Sec. 2.** RCW 16.57.010 and 1989 c 286 s 22 are each amended to read as follows:

For the purpose of this chapter:

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

(2) "Director" means the director of the department or a duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Brand inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined.

(8) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(10) "Poultry" means chickens, turkeys, ratites, and other domesticated fowl.

(11) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(12) "Ratite farming" means breeding, raising, and rearing of an ostrich, emu, or rhea in captivity or an enclosure.

(13) "Microchipping" means the implantation of an identification microchip in the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite.

NEW SECTION. Sec. 3. A new section is added to chapter 16.57 RCW to read as follows:

The department may, in consultation with representatives of the ratite industry, develop by rule a system that provides for the identification of individual ratites through the use of microchipping. The department may establish fees for the issuance or reissuance of microchipping numbers sufficient to cover the expenses of the department.

NEW SECTION. Sec. 4. A new section is added to chapter 16.36 RCW to read as follows:

(1) Poultry as defined in RCW 16.57.010 is subject to this chapter, including, but not limited to, quarantines, health certificate requirements, and rules adopted by the director.

(2) The department shall, in consultation with the ratite industry, the poultry industry, and other affected groups, review the adequacy of existing animal health regulations that pertain to ratites. The department shall adopt rules as deemed necessary to assure adequate protection to the ratite and poultry industries from a potential importation or spread of contagious diseases and parasites.

Passed the Senate March 5, 1993.

Passed the House April 5, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

**CHAPTER 106**

[Substitute Senate Bill 5148]

**DISABLED PARKING—RESTRICTIONS AND PENALTIES**

**Effective Date: 7/25/93**

AN ACT Relating to penalties for improper use of parking spaces for disabled persons; amending RCW 46.16.381; and prescribing penalties.

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

**Sec. 1.** RCW 46.16.381 and 1992 c 148 s 1 are each amended to read as follows:

(1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Is so severely disabled, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association; or

(g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician of the applicant shall document that the disability is comparable in severity to the others listed in this subsection.

(2) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the disabled person. Instead of regular motor vehicle license plates, disabled persons are entitled to receive special license plates bearing the international symbol of access for one vehicle registered in the disabled person's name. Disabled persons who are not issued the special license plates are entitled to receive a second special placard. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the special license plates or placard may park in places reserved for mobility disabled persons. The director shall adopt rules providing for the issuance of special placards and license plates to public



transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, and private nonprofit agencies as defined in chapter 24.03 RCW that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding homes, senior citizen center, or private nonprofit agency if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, and private nonprofit agencies are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(3) Whenever the disabled person transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the disabled person and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the disabled person, the removed plate shall be immediately surrendered to the director.

(4) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. The director may issue a second temporary placard during that period if requested by the person who is temporarily disabled. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the disabled person's physician. The parking placard of a disabled person shall be renewed, when required by the director, by satisfactory proof of the right to continued use of the privileges.

(5) Additional fees shall not be charged for the issuance of the special placards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(6) Any unauthorized use of the special placard or the special license plate is a misdemeanor.

(7) It is a traffic infraction, with a monetary penalty of ~~((not less than fifteen and not more than))~~ fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate or placard. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate or placard required under this section. A local jurisdiction providing on-street parking places reserved for physically

disabled persons may impose by ordinance time restrictions on the use of these parking places.

(8) The portion of a penalty imposed under subsection (7) of this section that is retained by a local jurisdiction under RCW 3.46.120, 3.50.100, 3.62.020, 3.62.040, or 35.20.220 shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(9) It is a misdemeanor for any person to willfully obtain a special license plate or placard in a manner other than that established under this section.

Passed the Senate February 18, 1993.

Passed the House April 5, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

## CHAPTER 107

[Senate Bill 5841]

### SHAKEN BABY SYNDROME EDUCATION

Effective Date: 7/25/93

AN ACT Relating to shaken baby syndrome; adding a new section to chapter 43.121 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that shaken baby syndrome is a medically serious, sometimes fatal, usually unintentional matter affecting newborns and very young children.

Vigorous shaking of an infant can result in bleeding inside the head, causing irreversible brain damage, blindness, cerebral palsy, hearing loss, spinal cord injury, seizures, learning disabilities, or death. Many healthy, intelligent infants suffer from shaken baby syndrome because their caregivers were unaware of the dangers. The damage is preventable through education and awareness.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.121 RCW to read as follows:

The council shall conduct a proactive, public information and communication outreach campaign regarding the dangers of shaking infants and young children, and the causes and prevention of shaken baby syndrome.

The public information campaign shall include production and distribution of a readily understandable brochure regarding shaken baby syndrome, explaining its medical effects upon infants and emphasizing preventive measures.

The brochure shall be distributed free of charge to the parents or guardians of each newborn, upon discharge from a hospital or other health facility. In the event of home birth attended by a licensed midwife, the midwife shall be responsible for presenting the brochure to the parents of the newborn.

The public information campaign may, within available funds, also include communication by electronic media, telephone hot-lines, and existing parenting education events funded by the council.

Passed the Senate March 9, 1993.  
Passed the House April 8, 1993.  
Approved by the Governor April 23, 1993.  
Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 108**

[Substitute Senate Bill 5699]

**PACIFIC NORTHWEST ECONOMIC REGION DELEGATE COUNCIL  
AND EXECUTIVE COMMITTEE**

**Effective Date: 7/25/93**

AN ACT Relating to the Pacific Northwest Economic Region; and amending RCW 43.147.010. Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 43.147.010 and 1991 c 251 s 2 are each amended to read as follows:

The Pacific Northwest Economic Region is hereby enacted into law and entered into by the state of Washington as a party, and is in full force and effect in accordance with the terms of this agreement.

**THE PACIFIC NORTHWEST ECONOMIC REGION**

**ARTICLE I—Policy and Purpose**

States and provinces participating in the Pacific Northwest Economic Region shall seek to develop and establish policies that: Promote greater regional collaboration among the seven entities; enhance the overall competitiveness of the region in international and domestic markets; increase the economic well-being of all citizens in the region; and improve the quality of life of the citizens of the Pacific Northwest.

States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include, but are not limited to: International trade; economic development; human resources; the environment and natural resources; energy; and education. Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is deemed worthwhile and of benefit to the participating entities. Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

The substantive actions of the Pacific Northwest Economic Region may take the form of uniform legislation enacted by two or more states and/or provinces

or policy initiatives endorsed as appropriate by participating entities. It shall not be necessary for all states and provinces to participate in each initiative.

#### ARTICLE II—Eligible Parties and Effective Date

Each of the following states and provinces is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, and Washington. This agreement establishing the Pacific Northwest Economic Region shall become effective when it is executed by one state, one province, and one additional state and/or province in a form deemed appropriate by each entity. This agreement shall continue in force and remain binding upon each state and province until renounced by it. Renunciation of this agreement must be preceded by sending one year's notice in writing of intention to withdraw from the agreement to the other parties to the agreement.

#### ARTICLE III—Organizational Structure

Each state and province participating in this agreement shall appoint representatives to the Pacific Northwest Economic Region. The organizational structure of the Pacific Northwest Economic Region shall consist of the following: A delegate council consisting of four legislators and the governor or governor's designee from each participating state and four representatives and the premier or the premier's designee from each participating province and an executive committee consisting of one legislator from each participating state and/or province who is a member of the delegate council and four of the seven governors/premiers or their designees who are members of the delegate council. The legislator members of the executive committee from each state or province shall be chosen by the legislator members of that state or province. The four governor or premier members of the executive committee shall be chosen by the governors and premiers from among the governors and premiers on the delegate council. At least one of four members representing the governors and premiers on the executive committee must be the premier of a Canadian province. Policy committees may be established to carry out further duties and responsibilities of the Pacific Northwest Economic Region.

#### ARTICLE IV—Duties and Responsibilities

The delegate council shall have the following duties and responsibilities: Facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives; work with policy-making committees in the development and implementation of specific initiatives; approve general organizational policies developed by the executive committee; provide final approval of the annual budget and staffing structure for the Pacific Northwest Economic Region developed by the executive committee; and other duties and responsibilities as may be established in the rules and regulations of the Pacific Northwest Economic Region. The executive committee shall perform the following duties and responsibilities: Elect the president and vice-president

of the Pacific Northwest Economic Region; approve and implement general organizational policies; develop the annual budget; devise the annual action plan; act as liaison with other public and private sector entities; review the availability of, and if appropriate apply for, (1) tax exempt status under the laws and regulations of the United States or any state or subdivision thereof and (2) similar status under the laws and regulations of Canada or any province or subdivision thereof, and approve such rules, regulations, organizational policies, and staffing structure for the Pacific Northwest Economic Region and take such further actions on behalf of the Pacific Northwest Economic Region as may be deemed by the executive committee to be necessary or appropriate to qualify for and maintain such tax exempt or similar status under the applicable laws or regulations; and other duties and responsibilities established in the rules and regulations of the Pacific Northwest Economic Region. The rules and regulations of the Pacific Northwest Economic Region shall establish the procedure for voting.

#### ARTICLE V—Membership of Policy Committees

Policy committees dealing with specific subject matter may be established by the executive committee.

Each participating state and province shall appoint legislators and governors or premiers to sit on these committees in accordance with its own rules and regulations concerning such appointments.

#### ARTICLE VI—General Provisions

This agreement shall not be construed to limit the powers of any state or province or to amend or repeal or prevent the enactment of any legislation.

Passed the Senate March 9, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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### CHAPTER 109

[Substitute Senate Bill 5889]

#### TEACHER TRAINING—REGIONAL COLLABORATIVE PROFESSIONAL DEVELOPMENT SCHOOL PILOT PROJECTS

Effective Date: 7/25/93

AN ACT Relating to teacher training; and creating new sections.

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

NEW SECTION. **Sec. 1.** The legislature, through ongoing efforts and looking to the future, recognizes the need to encourage and sponsor innovative and creative means to recruit, train, and retain highly qualified teachers as a priority for Washington's public education system.

Recognizing that the continued need for well-trained teachers is heightened by the evolving transformation of Washington's schools to performance-based learning and assessment with new, higher expectations for teachers and students, the legislature believes the need exists for an authentic partnership with direct, collaborative links between higher education and the public schools with regard to the training of teachers.

**NEW SECTION. Sec. 2.** The superintendent of public instruction shall:

(1) Award grants to selected educational service districts, school districts, or public higher education institutions for the 1993-95 biennium for not more than six but no fewer than four pilot regional collaborative professional development school projects. The pilot projects shall be operated through existing professional development centers in the selected educational service districts that are under the jurisdiction of the office of the superintendent of public instruction or through collaborative agreements between the participating school district and the participating higher education institution.

(2) The selected pilot projects shall be an authentic, collaborative partnership comprised of at least the school of education of an institution or institutions of higher education and one or more school districts.

(3) The superintendent of public instruction shall ensure that the participating educational service districts or school districts, through the collaborative partnership, provide:

(a) Management and coordination of pilot project teachers;

(b) Management and coordination of the student teacher, mentor teacher, and paraprofessional training programs at each site;

(c) At least fifty percent of the in-service training for site staff for the project, recognizing the need to emphasize the educational goals established by the legislature relative to the development of performance-based education; and

(d) Continuing education clock hour credit for in-service activities.

(4) The superintendent of public instruction and the higher education coordinating board shall ensure that the participating higher education institutions provide:

(a) Coordination of master's degree and master's in teaching intern programs as well as undergraduate and graduate level classes that lead to teaching certificate endorsements or degrees for staff;

(b) Coordination with the participating educational service districts and school districts of research projects on critical issues relative to the education goals established by the legislature relative to the development of performance-based education;

(c) Facilitation of regional teacher recruitment programs with special emphasis on the diversity of Washington's public school enrollment through the recruitment of minorities into the teaching profession;

(d) Facilitation of the recruitment of professionals changing careers to become teachers through the existing internship program;

(e) At least fifty percent of the in-service training for site staff for the project, recognizing the need to emphasize the educational goals established by the legislature relative to the development of performance-based education; and

(f) Coordination of pilot project evaluation and the development of recommendations regarding the replication or broader implementation of the regional collaborative professional development school model.

(5) The superintendent of public instruction shall ensure that the school districts represented in the pilot program reflect the diversity of Washington's schools and include large, small, rural, and urban school districts in both eastern and western Washington.

(6) The superintendent of public instruction shall report to the senate and house of representatives education and higher education committees no later than January 10, 1994, and January 10, 1995, on the activities of the pilot programs, including: Pilot site locations, partnerships at each location, number and ethnic origin of student teachers involved at each site, curricular activities, in-service offerings and, if applicable, placement of student teachers. The superintendent of public instruction, in the superintendent's final report, shall also recommend to the legislature the feasibility of continuing and expanding the program.

(7) Pilot project site partners, including the applicable professional education advisory board, annually shall jointly report to the state board of education on the program status and make recommendations regarding professional development requirements.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 11, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 110**

[Engrossed Senate Bill 5217]

**PREVAILING WAGE PAYMENT REQUIRED ON PROJECTS PERFORMED THROUGH PUBLIC CONTRACT**

**Effective Date:** 7/25/93

AN ACT Relating to public contracts; adding a new section to chapter 39.04 RCW; creating a new section; and repealing RCW 43.82.015.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 39.04 RCW to read as follows:

Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW.

**NEW SECTION. Sec. 2.** Section 1 of this act shall not apply to any project for which a call for competitive bids was made before the effective date of this act.

**NEW SECTION. Sec. 3.** RCW 43.82.015 and 1987 c 321 s 1 are each repealed.

Passed the Senate March 11, 1993.  
Passed the House April 5, 1993.  
Approved by the Governor April 23, 1993.  
Filed in Office of Secretary of State April 23, 1993.

**CHAPTER 111**

[Senate Bill 5324]

**SCHOOL TRANSPORTATION COST REIMBURSEMENT—DOUBLE AMENDMENT CORRECTED**

**Effective Date:** 7/25/93

AN ACT Relating to correcting a double amendment related to reimbursement for school transportation costs; and reenacting RCW 28A.150.280.

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

**Sec. 1.** RCW 28A.150.280 and 1990 c 33 s 110 and 1990 c 33 s 109 are each reenacted to read as follows:

Costs of acquisition of approved transportation equipment purchased prior to September 1, 1982, shall be reimbursed up to one hundred percent of the cost to be reimbursed over the anticipated life of the vehicle, as determined by the state superintendent: **PROVIDED**, That commencing with the 1980-81 school year, reimbursement shall be at one hundred percent or as close thereto as reasonably possible: **PROVIDED FURTHER**, That reimbursements for the acquisition of approved transportation equipment received by school districts



shall be placed in the transportation vehicle fund for the current or future purchase of approved transportation equipment and for major transportation equipment repairs consistent with rules and regulations authorized in RCW 28A.160.130.

Passed the Senate March 16, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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## CHAPTER 112

[Engrossed Substitute Senate Bill 5778]

### JOINT UNDERWRITING ASSOCIATION FOR MIDWIVES AND BIRTHING CENTERS

Effective Date: 7/25/93

AN ACT Relating to a joint underwriting association for midwives and birthing centers; and adding a new chapter to Title 48 RCW.

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

**NEW SECTION. Sec. 1.** Certified nurse midwives and licensed midwives experience a major problem in both the availability and affordability of malpractice insurance. In particular midwives practicing outside hospital settings are unable to obtain malpractice insurance at any price in this state at this time. Licensed midwives have been unable to obtain hospital privileges due in part to the requirement of almost all Washington hospitals that professional staff members have liability insurance.

The services performed by midwives are in demand by many women for childbirth and prenatal care. Women often choose to have a home or birth center birth instead of a hospital birth. Women are entitled to the provider of their choice at such a critical life event. Studies document the safety of midwife-attended births and the safety of home births for low-risk women.

At a time when safety, cost-effectiveness, and individual choice are of paramount concern to the citizens of Washington state, midwifery care in a variety of settings must be available to the public. This is essential to the goals of increased access to maternity care and increased cost-effectiveness of care, as well as addressing problems of provider shortage. One of the primary impediments to the availability of maternity services performed by midwives is the lack of available and affordable malpractice liability insurance coverage.

This chapter is intended to increase the availability of cost-effective, high-quality maternity care by making malpractice insurance available for midwives. This chapter is implemented by requiring all insurers authorized to write commercial or professional liability insurance to be members of a joint underwriting association created to provide malpractice insurance for midwives.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Association" means the joint underwriting association established under this chapter.

(2) "Midwifery and birth center malpractice insurance" means insurance coverage against the legal liability of the insured and against loss damage or expense incident to a claim arising out of the death or injury of a person as a result of negligence or malpractice in rendering professional service by a licensee.

(3) "Licensee" means a person or facility licensed to provide midwifery services under chapter 18.50, 18.88, or 18.46 RCW.

**NEW SECTION.** Sec. 3. The insurance commissioner shall approve by December 31, 1993, a reasonable plan for the establishment of a nonprofit, joint underwriting association for midwifery and birth center malpractice insurance subject to the conditions and limitations contained in this chapter. Such plan shall include a market assistance plan to be used prior to activating a joint underwriting association.

**NEW SECTION.** Sec. 4. The association shall be comprised of all insurers possessing a certificate of authority to write and engaged in writing medical malpractice insurance within this state and general casualty companies. Every insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact business in this state. Only licensed midwives under chapter 18.50 RCW, certified nurse midwives licensed under chapter 18.88 RCW, or birth centers licensed under chapter 18.46 RCW may participate in the joint underwriting authority.

**NEW SECTION.** Sec. 5. A licensee may apply to the association to purchase midwifery and birth center malpractice insurance and the association shall offer a policy with liability limits of one million dollars per individual and three million dollars per occurrence. The insurance commissioner shall require the use of a rating plan for midwifery malpractice insurance that permits rates to be modified according to practice volume. Any rating plan for midwifery malpractice insurance used under this section must be based on sound actuarial principles. Coverage may not exclude midwives who engage in home birth or birth center deliveries.

**NEW SECTION.** Sec. 6. The commissioner may select an insurer to administer a plan established under this chapter. The insurer must be admitted to transact the business of insurance of the state of Washington.

**NEW SECTION.** Sec. 7. The insurance commissioner may not approve a policy written on a claims made basis by an insurer doing business in this state unless the insurer guarantees to the commissioner the continued availability of suitable liability protection for midwives subsequent to the discontinuance of professional practice by the midwife or the sooner termination of the insurance policy by the insurer for so long as there is a reasonable probability of a claim for injury for which the health care provider might be liable.

**NEW SECTION. Sec. 8.** A risk management program for insureds of the association must be established as a part of the plan. This program must include but not be limited to: Investigation and analysis of frequency, severity, and causes of adverse or untoward outcomes; development of measures to control these injuries; systematic reporting of incidents; investigation and analysis of patient complaints; and education of association members to improve quality of care and risk reduction.

**NEW SECTION. Sec. 9.** By December 1, 1996, the insurance commissioner shall file or cause to be filed a report to the legislature detailing the operations, finances, claims, and marketing experience of the association.

**NEW SECTION. Sec. 10.** The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the association, including but not limited to, rules requiring or limiting certain policy provisions.

**NEW SECTION. Sec. 11.** Sections 1 through 10 of this act shall constitute a new chapter in Title 48 RCW.

Passed the Senate March 15, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

## CHAPTER 113

[Senate Bill 5660]

### CITIZENS' EXCHANGE PROGRAM

Effective Date: 7/25/93

AN ACT Relating to the citizens' exchange program; adding a new section to chapter 43.07 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 43.07 RCW to read as follows:

The secretary of state, in consultation with the department of trade, the department of agriculture, economic development consultants, the consular corps, and other international trade organizations, shall develop a Washington state citizens' exchange program that will initiate and promote:

(1) Citizen exchanges between Washington state agricultural, technical, and educational groups and organizations with their counterparts in targeted foreign countries.

(2) Expanded educational and training exchanges between Washington state individuals and organizations with similar groups in targeted foreign countries.

(3) Programs to extend Washington state expertise to targeted foreign countries to help promote better health and technical assistance in agriculture,

water resources, hydroelectric power, forestry management, education, and other areas.

(4) Efforts where a special emphasis is placed on utilizing Washington state's rich human resources who are retired from public and private life and have the time to assist in this program.

(5) People-to-people programs that may result in increased tourism, business relationships, and trade from targeted foreign nations to the Pacific Northwest.

**NEW SECTION. Sec. 2.** The secretary of state shall report back to the legislature in January 1994 with a proposal for instituting a Washington state citizen and educational exchange program.

Passed the Senate March 13, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

## CHAPTER 114

[Senate Bill 5384]

### PERFORMANCE-BASED COMPENSATION OF INVESTMENT ADVISERS

Effective Date: 7/25/93

AN ACT Relating to performance-based compensation of investment advisers; and amending RCW 21.20.030.

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

**Sec. 1.** RCW 21.20.030 and 1959 c 282 s 3 are each amended to read as follows:

It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; however, this subsection does not prohibit: (a) An investment advisory contract which provides for compensation based upon the total of a fund averaged over a definite period, or as of definite dates or taken as of a definite date; or (b) performance compensation arrangements permitted under any rule the director may adopt in order to allow performance compensation arrangements permitted under the Investment Advisers Act of 1940 and regulations promulgated by the securities and exchange commission thereunder;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

~~((Subsection (1) above does not prohibit an investment advisory contract which provides for compensation based upon the total of a fund averaged over~~

~~a definite period, or as of definite dates or taken as of a definite date.)~~  
"Assignment", as used in subsection (2) (~~above~~) of this section, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Passed the Senate March 13, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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## CHAPTER 115

[Engrossed Senate Bill 5101]

### MOTORCYCLE ENDORSEMENT RENEWAL FEE AND SKILLS EDUCATION COURSE COST LIMIT INCREASED

Effective Date: 7/25/93

AN ACT Relating to motorcycle fees; and amending RCW 46.20.505 and 46.81A.020.

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

**Sec. 1.** RCW 46.20.505 and 1989 c 203 s 2 are each amended to read as follows:

Every person applying for a special endorsement or a new category of endorsement of a driver's license authorizing such person to drive a motorcycle or a motor-driven cycle shall pay an examination fee of two dollars which is not refundable. In addition, the endorsement fee for the initial or new category motorcycle endorsement shall be six dollars and the subsequent renewal endorsement fee shall be ~~((seven))~~ fourteen dollars ~~((and fifty cents))~~. The initial or new category and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund.

**Sec. 2.** RCW 46.81A.020 and 1988 c 227 s 3 are each amended to read as follows:

(1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute a motorcycle skills education course for both novice and advanced motorcycle riders that is a minimum of eight hours and no more than sixteen hours at a cost of no more than ~~((thirty))~~ fifty dollars;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors to conduct at least three classes in a one-year period to maintain their teaching eligibility;

(d) Encourage the use of radio or intercom equipped helmets when, in the opinion of the instructor, radio or intercom equipped helmets improve the quality of instruction;

(e) Require a biennial report to be submitted to the legislative transportation committee that includes the following:

(i) A narrative history of the program;

(ii) Current biennium program appropriations versus actual program expenditures;

(iii) Historical enrollment statistics and enrollment forecasts;

(iv) Comparative data evaluating motorcycle traffic statistics of program graduates versus nongraduates;

(v) Data on the age of the enrollees;

(vi) Statistical information regarding general trends in motorcycle ridership in Washington state;

(vii) The number of courses offered throughout the biennium;

(viii) Information on course dropout rates.

(4) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved motorcycle skills education course. This information shall be used for the report required by subsection (3)(e) of this section.

Passed the Senate March 15, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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## CHAPTER 116

[Senate Bill 5229]

### REST AREAS—DEPARTMENT OF TRANSPORTATION AND STATE PATROL GRANTED JOINT RULE-MAKING AUTHORITY TO GOVERN

Effective Date: 7/25/93

AN ACT Relating to creating department of transportation and Washington state patrol's rule-making authority to govern state rest area activities; amending RCW 47.38.010 and 47.38.030; and prescribing penalties.

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

**Sec. 1.** RCW 47.38.010 and 1984 c 7 s 204 are each amended to read as follows:

Pursuant to chapter 34.05 RCW, the department and the Washington state patrol shall jointly adopt rules (~~(consistent with)~~) governing the conduct and the safety of the traveling public (~~(to govern)~~) relating to the use and control of rest areas and other areas as designated in RCW 47.12.250. Nothing herein may be construed as limiting the powers of the department as provided by law.

**Sec. 2.** RCW 47.38.030 and 1979 ex.s. c 136 s 102 are each amended to read as follows:

Any person violating RCW (~~(47.38.020)~~) 47.38.010 or any rule or regulation adopted (~~(or promulgated)~~) pursuant to RCW (~~(47.38.020 above)~~) 47.38.010 shall be guilty of a misdemeanor: **PROVIDED**, That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

Passed the Senate February 18, 1993.

Passed the House March 5, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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## CHAPTER 117

[Senate Bill 5302]

### SHELLFISH—FAMILY MEMBERS OF TIDELANDS OWNER EXEMPTED FROM PERSONAL USE RULES

**Effective Date:** 7/25/93

AN ACT Relating to food fish and shellfish; and amending RCW 75.08.080.

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

**Sec. 1.** RCW 75.08.080 and 1985 c 457 s 17 are each amended to read as follows:

- (1) The director may adopt, amend, or repeal rules as follows:
  - (a) Specifying the times when the taking of food fish or shellfish is lawful or unlawful.
  - (b) Specifying the areas and waters in which the taking and possession of food fish or shellfish is lawful or unlawful.
  - (c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take food fish or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.
  - (d) Regulating the possession, disposal, landing, and sale of food fish or shellfish within the state, whether acquired within or without the state.
  - (e) Regulating the prevention and suppression of diseases and pests affecting food fish or shellfish.
  - (f) Regulating the size, sex, species, and quantities of food fish or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishermen, dealers, boathouses, or processors of food fish or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of food fish and shellfish that may be used for purposes other than human consumption.

(j) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

"Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products.

Passed the Senate March 4, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

## CHAPTER 118

[Engrossed Substitute Senate Bill 5320]

### LIMITS ON PHOSPHORUS CONTENT OF DETERGENTS

Effective Date: 7/25/93

AN ACT Relating to limits on phosphorus contents in certain detergents; and adding new sections to Title 70 RCW.

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

NEW SECTION. **Sec. 1.** The legislature hereby finds and declares that:

(1) Phosphorus loading of surface waters can stimulate the growth of weeds and algae, and that such growth can have adverse environmental, health, and aesthetic effects;

(2) Household detergents contribute to phosphorus loading, and that a limit on detergents containing phosphorus can significantly reduce the discharge of phosphorus into the state's surface and ground waters;

(3) Household detergents containing no or very low phosphorus are readily available and that over thirty percent of the United States population lives in areas with a ban on detergents containing phosphorus; and



(4) Phosphorus limits on household detergents can significantly reduce treatment costs at those sewage treatment facilities that remove phosphorus from the waste stream.

It is therefore the intent of the legislature to impose a state-wide limit on the phosphorus content of household detergents.

NEW SECTION. **Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 1 through 4 of this act.

(1) "Department" means the department of ecology.

(2) "Dishwashing detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning dishes, whether by hand or by household machine.

(3) "Laundry detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning laundry, whether by hand or by household machine.

(4) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(5) "Phosphorus" means elemental phosphorus.

NEW SECTION. **Sec. 3.** (1) After July 1, 1994, a person may not sell or distribute for sale a laundry detergent that contains 0.5 percent or more phosphorus by weight.

(2) After July 1, 1994, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorus by weight.

(3) This section does not apply to the sale or distribution of detergents for commercial and industrial uses.

NEW SECTION. **Sec. 4.** The department is responsible for notifying major distributors and wholesalers of the state-wide limit on phosphorus in detergents.

NEW SECTION. **Sec. 5.** The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the provisions of section 3 of this act.

NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each added to Title 70 RCW.

Passed the Senate February 23, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

**CHAPTER 119**

[Substitute Senate Bill 5368]

**BOATS SOLD TO RESIDENTS OF FOREIGN COUNTRY—SALES TAX EXEMPTION**

**Effective Date:** 7/25/93

AN ACT Relating to a sales tax exemption for Washington boats sold to residents of foreign countries; and adding a new section to chapter 82.08 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of vessels to residents of foreign countries for use outside of this state, even though delivery is made within this state, but only if (1) the vessel will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification as provided by and filed with the department of revenue and signed by the purchaser or the purchaser's agent establishes the fact that the purchaser is a resident of a foreign country and that the vessel is for use outside of this state. One copy of the exemption certificate is to be filed with the department of revenue and a duplicate is to be retained by the dealer.

As used in this section, "vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

Passed the Senate March 15, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

**CHAPTER 120**

[Engrossed Senate Bill 5378]

**REGULATION OF HORTICULTURAL PLANTS AND FACILITIES BY  
DEPARTMENT OF AGRICULTURE**

**Effective Date:** 7/25/93

AN ACT Relating to horticultural plants and facilities; amending RCW 15.13.250, 15.13.260, 15.13.270, 15.13.280, 15.13.310, 15.13.320, 15.13.370, 15.13.390, 15.13.400, 15.13.410, 15.13.420, 15.13.430, 15.13.440, 15.13.470, and 15.13.480; and adding new sections to chapter 15.13 RCW.

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

**Sec. 1.** RCW 15.13.250 and 1990 c 261 s 1 are each amended to read as follows:

For the purpose of this chapter:

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

(2) "Director" means the director of the department or the director's duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, and viticultural plant, for planting, propagation or ornamentation growing or otherwise. The term does not apply to cut plant material, except cuttings, budsticks, scion wood, and similar plant parts used for propagative purposes, or to olericultural plants.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants.

(6) "Plant pests" means, but is not limited to any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants, weeds, or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(7) "Inspection and/or certification" means, but is not limited to, the inspection of any horticultural plants at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by the director of a written certificate stating the grades, classifications, and if such horticultural plants ~~((are free of))~~ meet Washington requirements for freedom from infestation by plant pests and are in compliance with all ~~((the))~~ other provisions of this chapter and rules adopted hereunder.

(8) "Nursery dealer" means any person who sells, holds for sale, or offers for sale, or plants, grows, receives, or handles horticultural plants, including turf for sale or for planting, including lawns, for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(11) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of certification document that accompanies the movement of inspected and certified plant material.

(12) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes.

(13) "Collected horticultural plant" means a noncultivated native plant, collected in its native habitat and sold for horticultural purposes. For purposes of this chapter, such plants shall be regarded as collected horticultural plants for the first calendar year after collection.

**Sec. 2.** RCW 15.13.260 and 1990 c 261 s 2 are each amended to read as follows:

The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing grades and/or classifications for any horticultural plant and standards for such grades and/or classifications.

(2) The director may adopt rules for labeling or tagging and for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(3) The director shall adopt rules establishing fees for inspection of horticultural plants and methods of collection thereof.

(4) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(5) The director shall when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.05 RCW (administrative procedure act) ((as enacted or hereafter amended)), concerning the adoption of rules and regulations.

**Sec. 3.** RCW 15.13.270 and 1990 c 261 s 3 are each amended to read as follows:

The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants as defined in RCW 15.13.250 and which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales. The director ~~((shall))~~ may adopt rules establishing ~~((a fee))~~ categories of sales and fees for the permit. The fees shall be deposited in the agricultural local fund.

All horticultural plants sold under such a permit issued by the director shall be subject to all the other provisions of this chapter except licensing as set forth herein.

**Sec. 4.** RCW 15.13.280 and 1987 c 35 s 1 are each amended to read as follows:

(1) No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license shall apply through the

master license system. The application shall be accompanied by a fee established by the director by rule. The director shall establish by rule, in accordance with chapter 34.05 RCW, a schedule of fees for retail nursery dealer licenses and a schedule of fees for wholesale nursery dealer licenses which shall be based upon the amount of a person's retail or wholesale sales of horticultural plants and turf. The schedule for retail licenses shall include, but shall not be limited to, separate fees for at least the following two categories: (a) A fee for a person whose gross business sales of such materials do not exceed two thousand five hundred dollars; and (b) a fee for a person whose gross business sales of such materials exceed two thousand five hundred dollars.

(2) Except as provided in RCW 15.13.270, a person conducting both retail and wholesale sales of horticultural plants at a place of business shall secure for the place of business (a) a retail nursery dealer license if retail sales of the plants and turf exceed such wholesale sales, or (b) a wholesale nursery dealer license if wholesale sales of the plants and turf exceed such retail sales.

(3) For farmers markets that are registered as nonprofit associations with the office of the secretary of state and at which individual producers are selling directly to consumers as provided in RCW 36.71.090, the director may allow a farmers market, as an alternative to licensing of individual producers, to obtain one wholesale nursery dealer license, as provided in subsection (1) of this section, at the appropriate level to cover all producers at each site at which the market operates.

(4) The licensing fee that must accompany an application for a new license shall be based upon the estimated gross business sales of horticultural plants and turf for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of such products during the preceding licensing year.

~~((4))~~ (5) The license shall expire on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall be posted in a conspicuous place open to the public in the location for which it was issued.

~~((5))~~ (6) The department may audit licensees during normal business hours to determine that appropriate fees have been paid.

**Sec. 5.** RCW 15.13.310 and 1990 c 261 s 4 are each amended to read as follows:

(1) There is hereby levied an annual assessment on the gross sale price of the wholesale market value for all fruit trees, fruit tree related ornamental trees, and fruit tree rootstock produced in Washington, and sold within the state or shipped from the state of Washington by any licensed nursery dealer during any license period, as set forth in this chapter. Fruit tree related ornamental tree nursery stock shall be limited to the genera, Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or

grafted or budded and planted for growing-on in the nursery. The director shall by rule subsequent to a hearing determine the rate of an assessment conforming with the costs necessary to carry out the fruit tree certification and nursery improvement programs specified in RCW 15.13.470.

Such wholesale market price may be determined by the wholesale catalogue price of the seller of such fruit trees, fruit tree related ornamental trees, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree related ornamentals, or fruit tree rootstock out of the state. If the seller or shipper do not have a catalogue, then such wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining such average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) Such assessment shall be due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous license period.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid.

**Sec. 6.** RCW 15.13.320 and 1990 c 261 s 5 are each amended to read as follows:

An advisory committee is hereby established to advise the director in the administration of the fruit tree and fruit tree related ornamental tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nursery dealers and the director or the director's designated appointee.

(2) The director shall appoint this committee from names submitted by the Washington state (~~nurserymen's~~) nursery and landscape association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments.

**NEW SECTION. Sec. 7.** A new section is added to chapter 15.13 RCW to read as follows:

The director may enter upon the premises of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter. If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. Denial of access to the director to perform inspections may subject a nursery dealer to revocation of the nursery license as provided in RCW 15.13.350.

**Sec. 8.** RCW 15.13.370 and 1990 c 261 s 8 are each amended to read as follows:

Any person licensed under the provisions of this chapter may request, upon the payment of actual costs to the department as prescribed by the director, the services of a ~~((horticultural))~~ nursery plant services inspector at such licensee's place of business or point of shipment during the shipping season. Subsequent to inspection ~~((such horticultural))~~ the inspector shall issue to such licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds not to be infected with plant pests and in compliance with the provisions of this chapter and rules adopted ~~((hereunder))~~ under this chapter.

**Sec. 9.** RCW 15.13.390 and 1971 ex.s. c 33 s 15 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person to sell, ship, or transport any horticultural plant in this state unless it ~~((is apparently free))~~ meets standards established in rule for freedom from infestation by plant pests. No person shall sell, ship, or transport any horticultural plant in this state unless it meets the requirements of this chapter or rules adopted ~~((hereunder))~~ under this chapter.

**Sec. 10.** RCW 15.13.400 and 1971 ex.s. c 33 s 16 are each amended to read as follows:

(1) It ~~((shall be))~~ is unlawful for any person to ship or deliver any horticultural plant into this state unless such horticultural plant is accompanied by an inspection certificate from the state or country of origin stating that such horticultural plant ~~((is apparently free of))~~ meets Washington requirements for freedom from infestation by plant pests and is in conformance with not less than the minimal requirements of this chapter or rules adopted ~~((hereunder))~~ under this chapter. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director in Olympia, Washington, on or before the date such horticultural plants enter into the state of Washington.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the state be inspected for conformance with the requirements of this chapter and rules adopted ~~((hereunder))~~ under this chapter, prior to release by the person delivering or transporting such horticultural plants into this state even though accompanied by acceptable inspection certificates issued by the state or country of origin.

**Sec. 11.** RCW 15.13.410 and 1990 c 261 s 10 are each amended to read as follows:

Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner~~((, and shall include the following:))~~.

~~(1) The ((common name; botanical name; and variety or color picture)) department shall by rule establish marking or tagging requirements for the following plant types:~~

- ~~(a) Fruit trees and ornamental trees and shrubs;~~
- ~~(b) Perennial plants;~~
- ~~(c) Flowering and nonflowering annuals and biennials;~~
- ~~(d) Turf grasses;~~
- ~~(e) Collected horticultural plants; and~~
- ~~(f) Aquatic and semi-aquatic plants.~~

(2) When plants, other than floricultural products are on display for retail sale, each unit of sale shall be tagged as prescribed ~~((above. On mixed lots or blocks, each plant shall be tagged as prescribed above))~~ in rule.

~~(3) ((Any other necessary information prescribed, by rule, by the director.))~~ The director may, whenever the director finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking.

~~((4) If the plant is a patented plant or is produced under a grower agreement, that fact shall be noted on the label or tag.))~~

**Sec. 12.** RCW 15.13.420 and 1990 c 261 s 11 are each amended to read as follows:

It shall be unlawful for any person:

(1) To falsely represent that the person is the agent or representative of any nursery dealer in horticultural plants;

(2) To deceive or defraud another in the sale of horticultural plants by substituting inferior or different grades from those ordered;

(3) To bring into this state ~~((any horticultural plants infested with plant pests,))~~ or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants ~~((infested with))~~ not in conformity with standards established in rule concerning infestation by plant pests;

(4) To sell, offer for sale, hold for sale, solicit orders for or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(5) To ~~((advertise the price of horticultural plants without denoting the size of the plant material))~~ alter an official certificate or other official inspection document for plant materials covered by this chapter or to represent a document as an official certificate when such is not the case;

(6) To make the following representations directly or indirectly, without limiting the effects of this section:



(a) That any horticultural plant has been propagated by grafting or budding methods, when such is not the fact;

(b) That any horticultural plant is healthy and will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not a fact;

(c) That any horticultural plant blooms the year around, or will bear an extraordinary number of blooms of unusual size or quality, when such is not a fact;

(d) That any horticultural plant is a new variety, when in fact it is a standard variety to which the person who is selling or holding such horticultural plant for sale has given a new name;

(e) That any horticultural plant cannot be purchased through usual outlets, or that limited stocks are available, when such is not the fact;

(f) That any horticultural plant offered for sale will be delivered in time for the next, or any specified, seasonal planting when the seller is aware of factors which make such delivery improbable;

(g) That the appearance of any horticultural plant is normal or usual when the appearance so represented is in fact abnormal or unusual;

(h) That the root system of any horticultural plant is appreciably larger than that which actually exists, whether accomplished by means of packaging, balling or otherwise;

(i) That bulblets are bulbs;

(j) That any horticultural plant is rare or an unusual item, when such is not the fact;

(7) To sell, offer for sale or hold for sale, or plant for another person any horticultural plants on the basis of grade, unless such horticultural plants have been graded and/or classified and meet the standards prescribed by the director for such grades and/or classifications;

(8) To substitute any other horticultural plant for a horticultural plant covered by an inspection certificate;

(9) To sell, offer for sale, or hold for sale, or plant for another person, any horticultural plant which is dead, in a dying condition, seriously broken, frozen, or damaged, or abnormally potbound;

~~(10) To sell, offer for sale, or hold for sale, or plant for another person as other than collected horticultural plant any such collected horticultural plant within one year after its collection in its natural habitat unless it is conspicuously marked or labeled as a collected horticultural plant.~~

~~No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490 by reason of dissemination of any false advertisement, unless the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller,~~

~~or advertising agency in the state of Washington, who caused dissemination of such false advertisement)).~~

**NEW SECTION.** Sec. 13. A new section is added to chapter 15.13 RCW to read as follows:

No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490 by reason of dissemination of any false advertisement, unless the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused dissemination of the false advertisement.

Sec. 14. RCW 15.13.430 and 1971 ex.s. c 33 s 19 are each amended to read as follows:

When the department has cause to believe that any horticultural plants are infested or infected by any plant pest, chemical or other damage, the director may issue a hold order on such horticulture plants. A hold order may prescribe conditions under which plants must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the plant material for sale. It shall be unlawful to sell, offer for sale, or move such plants until released in writing by the director.

Sec. 15. RCW 15.13.440 and 1990 c 261 s 12 are each amended to read as follows:

The director shall condemn any or all horticultural plants in a shipment or when any such horticultural plants are held for sale, or offered for sale and they are found to be dead, in a dying condition, seriously broken, diseased, infested with harmful insects to the extent that treatment is not practical, damaged or frozen or abnormally potbound and shall order such horticultural plants to be destroyed or returned at shipper's option. ~~((The director's order shall be final fifteen days after the date of issuance, unless within such time the superior court of the county where the condemnation occurred shall issue an order requiring the director to show cause why the order should not be stayed.))~~

**NEW SECTION.** Sec. 16. A new section is added to chapter 15.13 RCW to read as follows:

Upon issuance of an order by the director under RCW 15.13.430 or 15.13.440, the seller or holder of the plant material is entitled to a hearing under chapter 34.05 RCW.

Sec. 17. RCW 15.13.470 and 1990 c 261 s 13 are each amended to read as follows:

All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter and rules adopted under this chapter. No appropriation

is required for the disbursement of moneys from the account by the director. Any residual balance of funds remaining in the nursery inspection fund on July 26, 1987, shall be transferred to that account within the agricultural local fund: PROVIDED, That all fees collected for fruit tree, fruit tree related ornamental tree, and fruit tree rootstock assessments as set forth in this chapter shall be deposited in the northwest nursery fund to be used only for the Washington fruit tree and fruit tree related ornamental tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW. ~~((For the purpose of testing and improvement of fruit trees, fruit tree related ornamental trees, fruit tree rootstock, or other plant material used for the propagation of such stock, the director may, with advice from the advisory committee under RCW 15.13.320, expend up to fifty percent of the money collected from assessments during each fiscal year ending June 30. At no time may such contribution allow the balance of the northwest nursery fund to fall below the combined program cost of the two previous fiscal years. The amount of this minimum balance shall be determined by the director on June 30 of each year.))~~

**Sec. 18.** RCW 15.13.480 and 1971 ex.s. c 33 s 26 are each amended to read as follows:

The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter.

The director may enter into agreements with the United States department of agriculture for the issuance of phytosanitary certificates and other inspection documents, according to federal procedures, to facilitate the export of nursery products from the state.

Passed the Senate March 4, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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## CHAPTER 121

[Engrossed Senate Bill 5442]

### TOWING OF MOTOR VEHICLES—REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to tow trucks; amending RCW 46.55.085, 46.55.115, 46.55.120, and 81.80.040; and repealing RCW 46.90.103.

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

**Sec. 1.** RCW 46.55.085 and 1987 c 311 s 6 are each amended to read as follows:

(1) A law enforcement officer discovering an ~~((apparently abandoned))~~ unauthorized vehicle left within a highway right of way shall attach to the

vehicle a readily visible notification sticker. The sticker shall contain the following information:

- (a) The date and time the sticker was attached;
- (b) The identity of the officer;
- (c) A statement that if the vehicle is not removed within twenty-four hours from the time the sticker is attached, the vehicle may be taken into custody and stored at the owner's expense; and
- (d) The address and telephone number where additional information may be obtained.

(2) If the vehicle has current Washington registration plates, the officer shall check the records to learn the identity of the last owner of record. The officer or his department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the notification sticker.

(3) If the vehicle is not removed within twenty-four hours from the time the notification sticker is attached, the law enforcement officer may take custody of the vehicle and provide for the vehicle's removal to a place of safety. A vehicle that does not pose a safety hazard may remain on the roadside for more than twenty-four hours if the owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.

(4) For the purposes of this section a place of safety includes the business location of a registered tow truck operator.

**Sec. 2.** RCW 46.55.115 and 1987 c 330 s 744 are each amended to read as follows:

The Washington state patrol, under its authority to remove vehicles from the highway, may remove the vehicles directly, through towing operators appointed by the state patrol and called on a rotational or other basis, through contracts with towing operators, or by a combination of these methods. When removal is to be accomplished through a towing operator on a noncontractual basis, the state patrol may appoint any towing operator for this purpose upon the application of the operator. Each appointment shall be contingent upon the submission of an application to the state patrol and the making of subsequent reports in such form and frequency and compliance with such standards of equipment, performance, pricing, and practices as may be required by rule of the state patrol.

An appointment may be rescinded by the state patrol upon evidence that the appointed towing operator is not complying with the laws or rules relating to the removal and storage of vehicles from the highway. The state patrol may not rescind an appointment merely because a registered tow truck operator negotiates a different rate for voluntary, owner-requested towing than for involuntary towing under this chapter. The costs of removal and storage of vehicles under this section shall be paid by the owner or driver of the vehicle and shall be a lien upon the vehicle until paid, unless the removal is determined to be invalid.

Rules promulgated under this section shall be binding only upon those towing operators appointed by the state patrol for the purpose of performing towing services at the request of the Washington state patrol. Any person aggrieved by a decision of the state patrol made under this section may appeal the decision under chapter 34.05 RCW.

**Sec. 3.** RCW 46.55.120 and 1989 c 111 s 11 are each amended to read as follows:

(1) Vehicles impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle, or one who has purchased a vehicle from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle.

(b) The vehicle shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm can determine through the customer's bank or a check verification service that the presented check would not be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine

the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or storage fees, and any (~~bond or other~~) security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle for reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . .

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . Court located at . . . . . in the sum of \$. . . . ., in an action entitled . . . . ., Case No. . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this . . . . day of . . . . ., 19. . .

Signature . . . . .

Typed name and address  
of party mailing notice

(4) Any impounded abandoned vehicle not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle may be redeemed at any time before the start of the auction upon payment of towing and storage fees.

Sec. 4. RCW 81.80.040 and 1984 c 171 s 1 are each amended to read as follows:

The provisions of this chapter, except where specifically otherwise provided, and except the provisions providing for licenses, shall not apply to:

(1) Motor vehicles when operated in transportation exclusively within the corporate limits of any city or town of less than ten thousand population unless contiguous to a city or town of ten thousand population or over, nor between contiguous cities or towns both or all of which are less than ten thousand population;

(2) Motor vehicles when operated in transportation wholly within the corporate limits of cities or towns of ten thousand or more but less than thirty thousand population, or between such cities or towns when contiguous, as to which the commission, after investigation and the issuance of an order thereon, has determined that no substantial public interest exists which requires that such transportation be subject to regulation under this chapter;

(3) Motor vehicles when transporting exclusively the United States mail or in the transportation of newspapers or periodicals;

(4) Motor vehicles owned and operated by the United States, the state of Washington, or any county, city, town, or municipality therein, or by any department of them, or either of them;

(5) Motor vehicles specially constructed for towing not more than two disabled, unauthorized, or repossessed motor vehicles ((øf)), wrecking, or exchanging an operable vehicle for a disabled vehicle and not otherwise used in transporting goods for compensation. For the purposes of this subsection, a vehicle is considered to be repossessed only from the time of its actual repossession through the end of its initial tow;

(6) Motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market, or in the infrequent or seasonal transportation by one farmer for another farmer, if their farms are located within twenty miles of each other, of products of the farm, orchard, or dairy, including livestock and plant or animal wastes, or of supplies or commodities to be used on the farm, orchard, or dairy;

(7) Motor vehicles when transporting exclusively water in connection with construction projects only;

(8) Motor vehicles of less than 8,000 pounds gross vehicle weight when transporting exclusively legal documents, pleadings, process, correspondence, depositions, briefs, medical records, photographs, books or papers, cash or checks, when moving shipments of the documents described at the direction of an attorney as part of providing legal services.

NEW SECTION. Sec. 5. RCW 46.90.103 and 1975 1st ex.s. c 54 s 4 are each repealed.

Passed the Senate March 5, 1993.

Passed the House April 6, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 122**

[Engrossed Substitute Senate Bill 5515]

**WORKERS' COMPENSATION CLAIMS—EMPLOYEES' RIGHTS**

**Effective Date:** 7/25/93

AN ACT Relating to employee rights regarding industrial insurance claims; amending RCW 51.52.130; adding new sections to chapter 51.14 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 51.52.130 and 1982 c 63 s 23 are each amended to read as follows:

If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained (~~(by the court)~~), a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix



a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation ((then)), or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, ~~((if the decision and order of the board is reversed or modified resulting in additional benefits by the litigation that would be paid from the accident fund if the employer were not self-insured, then))~~ the attorney fees fixed by the court, for services before the court((;)) only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

NEW SECTION. Sec. 2. (1) The self-insurer shall provide, when authorized under RCW 51.28.070, a copy of the employee's claim file at no cost within fifteen days of receipt of a request by the employee or the employee's representative. If the self-insured employer determines that release of the claim file to an unrepresented worker in whole or in part, may not be in the worker's best interests, the employer must submit a request for denial with an explanation along with a copy of that portion of the claim file not previously provided within twenty days after the request from the worker. In the case of second or subsequent requests, a reasonable charge for copying may be made. The self-insurer shall provide the entire contents of the claim file unless the request is for only a particular portion of the file. Any new material added to the claim file after the initial request shall be provided under the same terms and conditions as the initial request.

(2) The self-insurer shall transmit notice to the department of any protest or appeal by an employee relating to the administration of an industrial injury or occupational disease claim under this chapter within five working days of receipt. The date that the protest or appeal is received by the self-insurer shall be deemed to be the date the protest is received by the department for the purpose of RCW 51.52.050.

(3) The self-insurer shall submit a medical report with the request for closure of a claim under this chapter.

NEW SECTION. Sec. 3. The self-insurer shall request allowance or denial of a claim within sixty days from the date that the claim is filed. If the self-insurer fails to act within sixty days, the department shall promptly intervene and adjudicate the claim.

NEW SECTION. Sec. 4. Failure of a self-insurer to comply with sections 2 and 3 of this act shall subject the self-insurer to a penalty under RCW

51.48.080, which shall accrue for the benefit of the employee. The director shall issue an order conforming with RCW 51.52.050 determining whether a violation has occurred within thirty days of a request by an employee.

NEW SECTION. Sec. 5. Sections 2 through 4 of this act are each added to chapter 51.14 RCW.

Passed the Senate March 17, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 123**

[Substitute Senate Bill 5535]

**MOTOR VEHICLE EXCISE TAX—ADDITIONAL TAX ON  
LARGE TRUCK-TYPE POWER UNITS**

**Effective Date: 7/25/93**

AN ACT Relating to the excise tax on large trucks; amending RCW 82.44.020, 84.44.050, and 46.16.070; reenacting and amending RCW 46.87.070; and adding a new section to chapter 46.16 RCW.

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

**Sec. 1.** RCW 46.87.070 and 1991 c 339 s 9 and 1991 c 163 s 5 are each reenacted and amended to read as follows:

(1) Washington-based trailers, semitrailers, or pole trailers shall be licensed in this state under the provisions of chapter 46.16 RCW except as herein provided. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable or commercial vehicles for the purpose of registration in those jurisdictions and this state. This provision does not apply to trailers, semitrailers, or pole trailers which have been issued permanent plates.

(2) Trailers, semitrailers, and pole trailers which are properly based in jurisdictions other than Washington, and which display currently registered license plates from such jurisdictions will be granted vehicle license reciprocity in this state without the need of further vehicle license registration. If pole trailers are not required to be licensed separately by a member jurisdiction, such vehicles may be operated in this state without displaying a current base license plate.

**Sec. 2.** RCW 82.44.020 and 1991 c 199 s 220 are each amended to read as follows:

(1) An excise tax is imposed for the privilege of using in the state any motor vehicle, except those operated under reciprocal agreements, the provisions of RCW 46.16.160 as now or hereafter amended, or dealer's licenses. The annual amount of such excise tax shall be two percent of the value of such vehicle.

(2) An additional excise tax is imposed, in addition to any other tax imposed by this section, for the privilege of using in the state any such motor vehicle, and the annual amount of such additional excise shall be two-tenths of one percent of the value of such vehicle.

(3) Effective with October 1992 motor vehicle registration expirations, a clean air excise tax is imposed in addition to any other tax imposed by this section for the privilege of using in the state any motor vehicle as defined in RCW 82.44.010, except that farm vehicles as defined in RCW 46.04.181 shall not be subject to the tax imposed by this subsection. The annual amount of the additional excise tax shall be two dollars and twenty-five cents. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars.

(4) An additional excise tax is imposed on truck-type power units that are used in combination with a trailer to transport loads in excess of forty thousand pounds combined gross weight. The rate of tax shall be fifty-eight one-hundredths of one percent of the value of the vehicle. Ten percent of the additional tax collected under this subsection shall be distributed in the manner prescribed in RCW 82.44.110(2). The remainder of the excise tax collected under this subsection shall be distributed in the manner prescribed in RCW 82.44.110(1). This tax shall not apply to power units used exclusively for hauling logs.

(5) The excise taxes imposed by subsections (1) through (3) of this section shall not apply to trailing units which are used in combination with a power unit subject to the additional excise tax imposed by subsection (4) of this section. This subsection shall not apply to trailing units used for hauling logs. The department of licensing is authorized to adopt rules to implement subsection (4) of this section and this subsection to assure that total motor vehicle excise tax revenue is not affected.

(6) In no case shall the total tax be less than two dollars except for proportionally registered vehicles.

~~((5))~~ (7) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein.

**Sec. 3.** RCW 84.44.050 and 1961 c 15 s 84.44.050 are each amended to read as follows:

The personal property of automobile transportation companies owning, controlling, operating or managing any motor propelled vehicle used in the business of transporting persons and/or property for compensation over any public highway in this state between fixed termini or over a regular route, shall be listed and assessed in the various counties where such vehicles are operated, in proportion to the mileage of their operations in such counties: PROVIDED,

That ((such)) vehicles subject to chapter 82.44 RCW and trailer units exempt under RCW 82.44.020(5) shall not be listed or assessed for ad valorem taxation so long as chapter 82.44 RCW remains in effect. All vessels of every class which are by law required to be registered, licensed or enrolled, must be assessed and the taxes thereon paid only in the county of their actual situs: PROVIDED, That such interest shall be taxed but once. All boats and small craft not required to be registered must be assessed in the county of their actual situs.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

Trailing units which are subject to RCW 82.44.020(5) shall, upon application, be issued a permanent license plate that is valid until the vehicle is sold, permanently removed from the state, or otherwise disposed of by the registered owner. The fee for this license plate is thirty-six dollars. Upon the sale, permanent removal from the state, or other disposition of a trailing unit bearing a permanent license plate the registered owner is required to return the license plate and registration certificate to the department. Violations of this section or misuse of a permanent license plate may subject the registered owner to prosecution or denial, or both, of future permanent registration of any trailing units. This section does not apply to any trailing units subject to the annual excise taxes prescribed in RCW 82.44.020. The department is authorized to adopt rules to implement this section for leased vehicles and other applications as necessary.

Sec. 5. RCW 46.16.070 and 1990 c 42 s 105 are each amended to read as follows:

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

4,000 lbs. ....	\$ 37.00
6,000 lbs. ....	\$ 44.00
8,000 lbs. ....	\$ 55.00
10,000 lbs. ....	\$ 62.00
12,000 lbs. ....	\$ 72.00
14,000 lbs. ....	\$ 82.00
16,000 lbs. ....	\$ 92.00
18,000 lbs. ....	\$ 137.00
20,000 lbs. ....	\$ 152.00
22,000 lbs. ....	\$ 164.00
24,000 lbs. ....	\$ 177.00

26,000 lbs.	.....	\$	187.00
28,000 lbs.	.....	\$	220.00
30,000 lbs.	.....	\$	253.00
32,000 lbs.	.....	\$	304.00
34,000 lbs.	.....	\$	323.00
36,000 lbs.	.....	\$	350.00
38,000 lbs.	.....	\$	384.00
40,000 lbs.	.....	\$	439.00
42,000 lbs.	.....	\$	<del>((456.00))</del> <u>546.00</u>
44,000 lbs.	.....	\$	<del>((466.00))</del> <u>556.00</u>
46,000 lbs.	.....	\$	<del>((501.00))</del> <u>591.00</u>
48,000 lbs.	.....	\$	<del>((522.00))</del> <u>612.00</u>
50,000 lbs.	.....	\$	<del>((566.00))</del> <u>656.00</u>
52,000 lbs.	.....	\$	<del>((595.00))</del> <u>685.00</u>
54,000 lbs.	.....	\$	<del>((642.00))</del> <u>732.00</u>
56,000 lbs.	.....	\$	<del>((677.00))</del> <u>767.00</u>
58,000 lbs.	.....	\$	<del>((704.00))</del> <u>794.00</u>
60,000 lbs.	.....	\$	<del>((750.00))</del> <u>840.00</u>
62,000 lbs.	.....	\$	<del>((804.00))</del> <u>894.00</u>
64,000 lbs.	.....	\$	<del>((822.00))</del> <u>912.00</u>
66,000 lbs.	.....	\$	<del>((915.00))</del> <u>1,005.00</u>
68,000 lbs.	.....	\$	<del>((954.00))</del> <u>1,044.00</u>
70,000 lbs.	.....	\$	<del>((1,027.00))</del> <u>1,117.00</u>
72,000 lbs.	.....	\$	<del>((1,098.00))</del> <u>1,188.00</u>
74,000 lbs.	.....	\$	<del>((1,193.00))</del> <u>1,283.00</u>
76,000 lbs.	.....	\$	<del>((1,289.00))</del> <u>1,379.00</u>
78,000 lbs.	.....	\$	<del>((1,407.00))</del> <u>1,497.00</u>
80,000 lbs.	.....	\$	<del>((1,518.00))</del> <u>1,608.00</u>

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

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

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035.

Passed the Senate March 15, 1993.  
Passed the House April 9, 1993.  
Approved by the Governor April 23, 1993.  
Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 124**

[Engrossed Senate Bill 5580]

**MANUFACTURED HOUSING SAFETY AND  
CONSTRUCTION STANDARDS ENFORCEMENT**

**Effective Date: 7/25/93**

AN ACT Relating to regulation of manufactured housing construction and safety; adding new sections to chapter 43.63A RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The director of the department of community development shall enforce manufactured housing safety and construction standards adopted by the secretary of housing and urban development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426). Furthermore, the director may make agreements with the United States government, state agencies, or private inspection organizations to implement the development and enforcement of applicable provisions of this chapter and the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) regarding the state administrative agency program.

**NEW SECTION. Sec. 2.** The department shall adopt all rules under chapter 34.05 RCW necessary to implement chapter . . . , Laws of 1993 (this act), giving due consideration to standards and regulations adopted by the secretary of housing and urban development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) for manufactured housing construction and safety standards.

**NEW SECTION. Sec. 3.** The department shall adopt appropriate hearing procedures under chapter 34.05 RCW for the holding of formal and informal presentation of views, giving due consideration to hearing procedures adopted by the secretary of housing and urban development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426).

**NEW SECTION. Sec. 4.** (1) A person who violates any of the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) applicable to sections 1, 2, 3, and 5 of this act or any rules adopted under sections 1, 2, 3, and 5 of this act is

liable to the state of Washington for a civil penalty of not to exceed one thousand dollars for each such violation. Each violation of the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) applicable to sections 1, 2, 3, and 5 of this act or any rules adopted under sections 1, 2, 3, and 5 of this act, shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(2) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates any of the provisions of sections 1, 2, 3, and 5 of this act or any rules adopted under sections 1, 2, 3, and 5 of this act, in a manner that threatens the health or safety of any purchaser, shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(3) Any legal fees, court costs, expert witness fees, and staff costs expended by the state in successfully pursuing violators of sections 1, 2, 3, and 5 of this act shall be reimbursed in full by the violators.

NEW SECTION. Sec. 5. (1) The director or the director's authorized representative shall conduct such inspections and investigations as may be necessary to implement or enforce manufactured housing rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For the purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge shall:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which manufactured homes are manufactured, stored, or held for sale; and

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426). Each inspection shall be commenced and completed with reasonable promptness.

(3) For the purpose of carrying out the provisions of this chapter, the director or the director's authorized representative is authorized:

(a) To require, by general or special orders, any factory, warehouse, or establishment in which manufactured homes are manufactured, to file, in such form as prescribed, reports or answers in writing to specific questions relating to any function of the department under this chapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the department within such reasonable time periods as prescribed by the department; and

(b) To hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records, as the director or such officer or employee deems advisable.

(4) In carrying out the inspections authorized by this section the director shall establish by rule, under chapter 34.05 RCW, and impose on manufactured home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by the director in conducting the inspections, provided these fees are set in accordance with guidelines established by the United States secretary of housing and urban development.

**NEW SECTION. Sec. 6.** This act shall expire and be of no force and effect on January 1 in any year following the failure of the United States department of housing and urban development to reimburse the state for the duties described in this act.

**NEW SECTION. Sec. 7.** Sections 1 through 6 of this act are each added to chapter 43.63A RCW.

Passed the Senate March 17, 1993.

Passed the House April 8, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

## CHAPTER 125

[Senate Bill 5597]

### CONSUMER PROTECTION OR ANTITRUST LAWS—RELEASE OF DOCUMENTARY MATERIALS BY ATTORNEY GENERAL

**Effective Date:** 7/25/93

AN ACT Relating to documentary materials; amending RCW 19.86.110; and adding a new section to chapter 19.86 RCW.

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

**Sec. 1.** RCW 19.86.110 and 1990 c 199 s 1 are each amended to read as follows:

(1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he believes to be relevant to the subject matter of an investigation of a possible violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce, or (b) may have knowledge of any information which the attorney general believes relevant to the subject matter of



such an investigation, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of such demands pertaining to such documentary material or information: PROVIDED, That this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer or managing agent of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it shall be a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the United States to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: PROVIDED, That((7));

(a) Under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced such material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such person((-));[;]

(b) The attorney general may provide copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony to an official of this state, the federal government, or other state, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if before the disclosure the receiving official agrees in writing that the information may not be disclosed to anyone other than that official or the official's authorized employees. The material provided under this subsection (7)(b) is subject to the

confidentiality restrictions set forth in this section and may not be introduced as evidence in a criminal prosecution; and

(c) The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1), stating good cause, may be filed in the superior court for Thurston county, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

NEW SECTION. Sec. 2. A new section is added to chapter 19.86 RCW to read as follows:

Whenever the attorney general receives documents or other material from:

(1) A federal agency, pursuant to its subpoena or Hart-Scott-Rodino authority; or

(2) Another state's attorney general, pursuant to that state's presuit investigative subpoena powers, the documents or materials are subject to the same restrictions as and may be used for all the purposes set forth in RCW 19.86.110.

Passed the Senate March 15, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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**CHAPTER 126**

[Substitute Senate Bill 5744]

**CITY ASSUMPTION OF RESPONSIBILITY FOR STREETS  
THAT ARE A PART OF STATE HIGHWAY SYSTEM**

**Effective Date: 7/25/93**

AN ACT Relating to streets that are part of the state highway system; and amending RCW 47.24.020.

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

**Sec. 1.** RCW 47.24.020 and 1991 c 342 s 52 are each amended to read as follows:

The jurisdiction, control, and duty of the state and city or town with respect to such streets shall be as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of ~~((fifteen))~~ twenty-two thousand five hundred or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right of way to protect the roadway itself. When the population of a city or town ~~((reaches fifteen))~~ first exceeds twenty-two thousand ~~((after January 1, 1990, the state shall retain the responsibility for the stability of slopes of cuts and fills and the embankments within the right of way to protect the road itself until the legislature acts upon the findings of the task force created in section 53, chapter 342, Laws of 1991, or until June 30, 1993, whichever occurs first))~~ five hundred according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility shall require the grantee or permittee to restore, repair, and replace to its original condition any portion of the street damaged or injured by it;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of ~~((fifteen))~~ twenty-two thousand five hundred or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of ~~((fifteen))~~ twenty-two thousand five hundred according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town ~~((reaches fifteen))~~ first exceeds twenty-two thousand ~~((after January 1, 1990, the state shall retain the responsibility for installing, operating, maintaining, and controlling such signals, signs, and devices until the legislature acts upon the findings of the task force created in section 53, chapter 342, Laws of 1991, or until June 30, 1993, whichever occurs first))~~ five hundred according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights of way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights

of way may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights of way so acquired shall vest in the city or town: PROVIDED, That no vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the department; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town.

Passed the Senate March 13, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 23, 1993.

Filed in Office of Secretary of State April 23, 1993.

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## CHAPTER 127

[Engrossed Substitute House Bill 1569]

### MALICIOUS HARASSMENT—REVISED DEFINITION AND ENFORCEMENT PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to malicious harassment; amending RCW 9A.36.080; adding new sections to chapter 9A.36 RCW; adding a new section to chapter 36.28A RCW; adding a new section to chapter 43.101 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 9A.36 RCW to read as follows:

The legislature finds that crimes and threats against persons because of their race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicaps are serious and increasing. The legislature also finds that crimes and threats are often directed against interracial couples and their children or couples of mixed religions, colors, ancestries, or national origins because of bias and bigotry against the race, color, religion, ancestry, or national origin of one person in the couple or family. The legislature finds that the state interest in preventing crimes and threats motivated

by bigotry and bias goes beyond the state interest in preventing other felonies or misdemeanors such as criminal trespass, malicious mischief, assault, or other crimes that are not motivated by hatred, bigotry, and bias, and that prosecution of those other crimes inadequately protects citizens from crimes and threats motivated by bigotry and bias. Therefore, the legislature finds that protection of those citizens from threats of harm due to bias and bigotry is a compelling state interest.

The legislature also finds that in many cases, certain discrete words or symbols are used to threaten the victims. Those discrete words or symbols have historically or traditionally been used to connote hatred or threats towards members of the class of which the victim or a member of the victim's family or household is a member. In particular, the legislature finds that cross burnings historically and traditionally have been used to threaten, terrorize, intimidate, and harass African Americans and their families. Cross burnings often preceded lynchings, murders, burning of homes, and other acts of terror. Further, Nazi swastikas historically and traditionally have been used to threaten, terrorize, intimidate, and harass Jewish people and their families. Swastikas symbolize the massive destruction of the Jewish population, commonly known as the holocaust. Therefore, the legislature finds that any person who burns or attempts to burn a cross or displays a swastika on the property of the victim or burns a cross or displays a swastika as part of a series of acts directed towards a particular person, the person's family or household members, or a particular group, knows or reasonably should know that the cross burning or swastika may create a reasonable fear of harm in the mind of the person, the person's family and household members, or the group.

The legislature also finds that a hate crime committed against a victim because of the victim's gender may be identified in the same manner that a hate crime committed against a victim of another protected group is identified. Affirmative indications of hatred towards gender as a class is the predominant factor to consider. Other factors to consider include the perpetrator's use of language, slurs, or symbols expressing hatred towards the victim's gender as a class; the severity of the attack including mutilation of the victim's sexual organs; a history of similar attacks against victims of the same gender by the perpetrator or a history of similar incidents in the same area; a lack of provocation; an absence of any other apparent motivation; and common sense.

**Sec. 2.** RCW 9A.36.080 and 1989 c 95 s 1 are each amended to read as follows:

(1) A person is guilty of malicious harassment if he or she maliciously and ~~((with the intent to intimidate or harass another person because of, or in a way that is reasonably related to, associated with, or directed toward, that person's))~~ intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:



(a) Causes physical injury to the victim or another person; ~~((or))~~

~~(b) ((By words or conduct places another person in reasonable fear of harm to his person or property or harm to the person or property of a third person. Such words or conduct include, but are not limited to, (i) cross burning, (ii) painting, drawing, or depicting symbols or words on the property of the victim when the symbols or words historically or traditionally connote hatred or threats toward the victim, or (iii) written or oral communication designed to intimidate or harass because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap. However, it does not constitute malicious harassment for a person to speak or act in a critical, insulting, or deprecatory way unless the context or circumstances surrounding the words or conduct places another person in reasonable fear of harm to his or her person or property or harm to the person or property of a third person; or~~

~~(e)) Causes physical damage to or destruction of the property of the victim or another person; or~~

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

~~(2) ((The following constitute per se violations of this section:~~

~~(a) Cross burning; or~~

~~(b) Defacement of the property of the victim or a third person with symbols or words when the symbols or words historically or traditionally connote hatred or threats toward the victim.~~

(3)) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) "Sexual orientation" for the purposes of this section means heterosexuality, homosexuality, or bisexuality.

(7) Malicious harassment is a class C felony.

~~((4) In addition to the criminal penalty provided in subsection (3) of this section, there is hereby created a civil cause of action for malicious harassment. A person may be liable to the victim of malicious harassment for actual damages and punitive damages of up to ten thousand dollars.~~

~~(5))~~ (8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington.

NEW SECTION. Sec. 3. A new section is added to chapter 9A.36 RCW to read as follows:

In addition to the criminal penalty provided in RCW 9A.36.080 for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action.

NEW SECTION. Sec. 4. A new section is added to chapter 36.28A RCW to read as follows:

(1) The Washington association of sheriffs and police chiefs shall establish and maintain a central repository for the collection and classification of information regarding violations of RCW 9A.36.080. Upon establishing such a repository, the association shall develop a procedure to monitor, record, and classify information relating to violations of RCW 9A.36.080 and any other

crimes of bigotry or bias apparently directed against other persons because the people committing the crimes perceived that their victims were of a particular race, color, religion, ancestry, national origin, gender, sexual orientation, or had a mental, physical, or sensory handicap.

(2) All local law enforcement agencies shall report monthly to the association concerning all violations of RCW 9A.36.080 and any other crimes of bigotry or bias in such form and in such manner as prescribed by rules adopted by the association. Agency participation in the association's reporting programs, with regard to the specific data requirements associated with violations of RCW 9A.36.080 and any other crimes of bigotry or bias, shall be deemed to meet agency reporting requirements. The association must summarize the information received and file an annual report with the governor and the senate law and justice committee and the house of representatives judiciary committee.

(3) The association shall disseminate the information according to the provisions of chapters 10.97 and 10.98 RCW, and all other confidentiality requirements imposed by federal or Washington law.

NEW SECTION. Sec. 5. A new section is added to chapter 43.101 RCW to read as follows:

The criminal justice training commission shall provide training for law enforcement officers in identifying, responding to, and reporting all violations of RCW 9A.36.080 and any other crimes of bigotry or bias.

NEW SECTION. Sec. 6. If specific funding for the purposes of implementing section 5 of this act, referencing this act by bill and section number, is not provided by June 30, 1993, in the omnibus appropriations act, section 5 of this act shall be null and void.

NEW SECTION. Sec. 7. 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 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 25, 1993.

Filed in Office of Secretary of State April 25, 1993.

CHAPTER 128

[Engrossed Substitute House Bill 1338]

INTERFERENCE WITH HEALTH CARE FACILITIES,  
PROVIDERS, AND DELIVERY PROHIBITED

Effective Date: 4/26/93

AN ACT Relating to prohibiting interference with access to health care, health care providers, and health care service delivery; amending RCW 10.31.100 and 10.97.070; adding a new chapter to Title 9A RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds that seeking or obtaining health care is fundamental to public health and safety.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Health care facility" means a facility that provides health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home.

(2) "Health care provider" has the same meaning as defined in RCW 7.70.020 (1) and (2), and also means an officer, director, employee, or agent of a health care facility who sues or testifies regarding matters within the scope of his or her employment.

(3) "Aggrieved" means:

(a) A person, physically present at the health care facility when the prohibited actions occur, whose access is or is about to be obstructed or impeded;

(b) A person, physically present at the health care facility when the prohibited actions occur, whose care is or is about to be disrupted;

(c) The health care facility, its employees, or agents;

(d) The owner of the health care facility or the building or property upon which the health care facility is located.

**NEW SECTION. Sec. 3.** It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by:

(1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located;

(2) Making noise that unreasonably disturbs the peace within the facility;

(3) Trespassing on the facility or the common areas of the real property upon which the facility is located;

(4) Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or

(5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose.

**NEW SECTION. Sec. 4.** A violation of section 3 of this act is a gross misdemeanor. A person convicted of violating section 3 of this act shall be punished as follows:

(1) For a first offense, a fine of not less than two hundred fifty dollars and a jail term of not less than twenty-four consecutive hours;

(2) For a second offense, a fine of not less than five hundred dollars and a jail term of not less than seven consecutive days; and

(3) For a third or subsequent offense, a fine of not less than one thousand dollars and a jail term of not less than thirty consecutive days.

**Sec. 5.** RCW 10.31.100 and 1988 c 190 s 1 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((8))~~ (9) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270 shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.39.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious

bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.100 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the

person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of section 3 of this act may arrest such person.

(10) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((40))~~ (11) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the police officer acts in good faith and without malice.

**NEW SECTION. Sec. 6.** (1) A person or health care facility aggrieved by the actions prohibited by section 3 of this act may seek civil damages from those who committed the prohibited acts and those acting in concert with them. A plaintiff in an action brought under this chapter shall not recover more than his or her actual damages and additional sums authorized in section 7 of this act. Once a plaintiff recovers his or her actual damages and any additional sums authorized under this chapter, additional damages shall not be recovered. A person does not have to be criminally convicted of violating section 3 of this act to be held civilly liable under this section. It is not necessary to prove actual damages to recover the additional sums authorized under section 7 of this act, costs, and attorneys' fees. The prevailing party is entitled to recover costs and attorneys' fees.

(2) The superior courts of this state shall have authority to grant temporary, preliminary, and permanent injunctive relief to enjoin violations of this chapter.

In appropriate circumstances, any superior court having personal jurisdiction over one or more defendants may issue injunctive relief that shall have binding effect on the original defendants and persons acting in concert with the original defendants, in any county in the state.

Due to the nature of the harm involved, injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute.

The state and its political subdivisions shall cooperate in the enforcement of court injunctions that seek to protect against acts prohibited by this chapter.

**NEW SECTION. Sec. 7.** In a civil action brought under this chapter, an individual plaintiff aggrieved by the actions prohibited by section 3 of this act may be entitled to recover up to five hundred dollars for each day that the actions occurred, or up to five thousand dollars for each day that the actions occurred if the plaintiff aggrieved by the actions prohibited under section 3 of this act is a health care facility.

**NEW SECTION. Sec. 8.** Nothing in section 3 of this act shall prohibit either lawful picketing or other publicity for the purpose of providing the public with information.

**NEW SECTION.** Sec. 9. A court having jurisdiction over a criminal or civil proceeding under this chapter shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a health care patient or health care provider who is a party or witness in a proceeding, including granting protective orders and orders in limine.

**Sec. 10.** RCW 10.97.070 and 1977 ex.s. c 314 s 7 are each amended to read as follows:

(1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) Unless the agency determines release would interfere with an ongoing criminal investigation, in any action brought pursuant to this chapter, criminal justice agencies shall disclose identifying information, including photographs of suspects, if the acts are alleged by the plaintiff or victim to be a violation of section 3 of this act.

(3) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process.

**NEW SECTION.** Sec. 11. Nothing in this chapter shall be construed to limit the right to seek other available criminal or civil remedies. The remedies provided in this chapter are cumulative, not exclusive.

**NEW SECTION.** Sec. 12. 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. 13. Sections 2 through 4, 6 through 9, and 11 of this act shall constitute a new chapter in Title 9A RCW.

**NEW SECTION.** Sec. 14. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 19, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 26, 1993.

Filed in Office of Secretary of State April 26, 1993.



**CHAPTER 129**

[Substitute Senate Bill 5479]

**CHILDREN'S DAY****Effective Date: 7/25/93**

AN ACT Relating to Washington state children's day; reenacting and amending RCW 1.16.050; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that Washington's children are one of our most valuable assets, representing hope for the future. Children today are at risk for many things, including drug and alcohol abuse, child abuse, suicide, peer pressure, and the economic and educational challenges of a changing world. It is increasingly important for families, schools, health professionals, caregivers, and workers at state agencies charged with the protection and help of children to listen to them, to support and encourage them, and to help them build their dreams for the future.

To increase recognition of children's issues, a national children's day is celebrated in October, with ceremonies and activities devoted to children. Washington state focuses special attention on its children by establishing a Washington state children's day.

**Sec. 2.** RCW 1.16.050 and 1991 sp.s. c 20 s 1 and 1991 c 57 s 2 are each reenacted and amended to read as follows:

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

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

rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

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

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

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

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the second Sunday in October be recognized as Washington state children's day but shall not be considered a legal holiday for any purposes.

Passed the Senate March 4, 1993.

Passed the House April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 130

[Second Substitute Senate Bill 5288]

## SOLID WASTE COLLECTION TAX CONTINUED

Effective Date: 7/1/93

AN ACT Relating to the solid waste collection tax; amending RCW 82.18.100 and 70.95.800; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 82.18.100 and 1989 c 431 s 80 are each amended to read as follows:

(1) There is imposed on each person using the services of a solid waste collection business a solid waste collection tax of one percent of the consideration charged for the services. This tax shall be applied only to a service charge for actual solid waste collection services that are provided. For residential collection service only, the tax shall apply to the lesser of the consideration charged for the services or:

(a) For customers with less than two-can service, the first eight dollars of the monthly charge for the services.

(b) For customers with two-can service or more, the first twelve dollars of the monthly charge for the services.

(2) Money collected under this section shall be held in trust until paid to the state. Money received by the state shall be deposited in the solid waste management account created by RCW 70.95.800.

(3) This section expires July 1, ~~((1993))~~ 1995.

**Sec. 2.** RCW 70.95.800 and 1991 sp.s. c 13 s 73 are each amended to read as follows:

The solid waste management account is created in the state treasury. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used to ~~((carry out the purposes of this act))~~;

(1) Review and approve local solid waste management plans;

(2) Provide grants to local governments for the purpose of developing and implementing the waste reduction and recycling element of local solid waste management plans;

(3) Provide grants to local governments to enhance markets for recycled content products and to develop programs for procurement of recycled content products;

(4) Provide grants to local governments for the proper disposal of household used oil collected at a used oil collection facility and contaminated without knowledge of the operator of the facility;

(5) Provide technical assistance to local governments in developing and implementing local solid waste management plans and programs;

(6) Evaluate and assess progress of state and local jurisdictions and private industry toward achieving the goals of this chapter;

(7) Conduct necessary research and studies to assess the feasibility of new technologies or other solid waste management activities to carry out the purposes of this chapter; and

(8) Administer and collect the tax imposed in RCW 82.18.100.

**NEW SECTION. Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 16, 1993.  
Passed the House April 15, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 131**

[Senate Bill 5455]

**CHEMICAL DEPENDENCY TREATMENT—RECODIFICATION**

**Effective Date: 7/25/93**

AN ACT Relating to correcting the codification of a section relating to chemical dependency treatment; adding a new section to chapter 70.96A RCW; and recodifying RCW 70.96.150.

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

**NEW SECTION. Sec. 1.** RCW 70.96.150 is recodified as a section in chapter 70.96A RCW.

Passed the Senate March 4, 1993.  
Passed the House April 15, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 132**

[House Bill 1041]

**GROUP LIFE INSURANCE—COVERAGE OF FAMILY MEMBERS**

**Effective Date: 7/25/93**

AN ACT Relating to family member coverage under group life insurance policies; and amending RCW 48.24.030.

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

**Sec. 1.** RCW 48.24.030 and 1975 1st ex.s. c 266 s 11 are each amended to read as follows:

(1) Insurance under any group life insurance policy issued pursuant to RCW 48.24.020, or 48.24.050, or 48.24.060, or 48.24.070 or 48.24.090 may, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol

elect, be extended to insure the spouse and dependent children, or any class or classes thereof, of each such insured employee or member who so elects, in amounts in accordance with a plan which precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member (~~(other than)~~) including a spouse shall not be in excess of fifty percent of the insurance on the life of the insured employee or member (~~(or two thousand dollars, whichever is less.~~

~~Insurance on the life of a spouse of an insured employee or member shall not exceed fifty percent of the amount of insurance on the life of the insured employee or member).~~

Premiums for the insurance on such family members shall be paid by the policyholder, either from the employer's funds or funds contributed by him, trustee's funds, or labor union funds, and/or from funds contributed by the insured employees or members, or from both.

(2) Such a spouse insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter.

Passed the House February 12, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 133

[Substitute House Bill 1532]

### PHYSICAL THERAPIST INTERIM PERMITS

Effective Date: 7/25/93

AN ACT Relating to interim permits for applicants for physical therapist licenses; amending RCW 18.74.029; and adding a new section to chapter 18.74 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 18.74 RCW to read as follows:

(1) The department, upon approval by the board, shall issue an interim permit authorizing an applicant for licensure who meets the minimum qualifications stated in RCW 18.74.030 to practice physical therapy under graduate supervision pending notification of the results of the first licensure examination for which the applicant is eligible, but not to exceed six months.

(2) For purposes of this section, "graduate supervision" means supervision of a holder of an interim permit by a licensed physical therapist who is on the premises at all times. Graduate supervision shall include consultation regarding evaluation, treatment plan, treatment program, and progress of each assigned patient at appropriate intervals and be documented by cosignature of notes by the

licensed physical therapist. RCW 18.74.012 is not applicable for holders of interim permits.

(3) If the holder of the interim permit fails the examination, the permit expires upon notification and is not renewable.

Sec. 2. RCW 18.74.029 and 1987 c 150 s 47 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses and interim permits, and the discipline of licensees and holders of interim permits under this chapter.

Passed the House March 13, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 134**

[Substitute House Bill 1678]

**EXPORT OPPORTUNITIES FOR SMALL AND MEDIUM-SIZED BUSINESSES**

**Effective Date: 7/25/93**

AN ACT Relating to operation new market; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes that export opportunities for small and medium-sized businesses stimulates economic growth. Within current resources, the department of trade and economic development shall work with the Tacoma world trade center, to assist small and medium-sized businesses with export opportunities.

Passed the House March 13, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 135

[Engrossed House Bill 1415]

## IMPRINTING OF SOLID DOSAGE OVER-THE-COUNTER MEDICATIONS

Effective Date: 4/30/93

AN ACT Relating to over-the-counter medication; amending RCW 69.60.030, 69.60.070, and 69.60.090; and declaring an emergency.

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

**Sec. 1.** RCW 69.60.030 and 1989 c 247 s 2 are each amended to read as follows:

(1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication: PROVIDED, HOWEVER, That an over-the-counter medication which has clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication in solid dosage form contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer, packer, or distributor of the medication.

**Sec. 2.** RCW 69.60.070 and 1989 c 247 s 7 are each amended to read as follows:

All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, ~~((1993))~~ 1994, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, ~~((1994))~~ 1995, unless such over-the-counter medication complies with the imprinting requirements of this chapter.

**Sec. 3.** RCW 69.60.090 and 1989 c 247 s 9 are each amended to read as follows:

Before January 1, ~~((1993))~~ 1994, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter~~((which))~~ that govern~~((s))~~ the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system for imprinting solid dosage form over-

the-counter medication must be the same or earlier than the dates of implementation set out in the state system for imprinting solid dosage form over-the-counter medication. If the board determines that the federal system for imprinting solid dosage form over-the-counter medication is substantially equivalent to the state system for imprinting solid dosage form over-the-counter medication, this chapter will cease to exist on January 1, ((1993)) 1994. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented.

**NEW SECTION. Sec. 4.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 136

[Engrossed Substitute House Bill 1435]

### SUPPLEMENTAL CAPITAL BUDGET

Effective Date: 4/30/93

AN ACT Relating to the capital budget; amending 1991 c 14 s 21 (uncodified); amending 1992 c 233 s 12 (uncodified); adding a new section to chapter 233, Laws of 1992 (uncodified); and declaring an emergency.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 233, Laws of 1992 (uncodified) to read as follows:

#### **FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

The department of general administration may enter into a financial contract in the principal amount of \$24,800,000 plus financing costs and required reserves pursuant to chapter 39.94 RCW. This amount is for the acquisition of land and a building located in Yakima, and for development of a Yakima Government Service Center that will be used for state agencies.

**Sec. 2.** 1991 c 14 s 21 (uncodified) is amended to read as follows:

#### **FOR THE DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT**



(1) Community economic revitalization board (86-1-001)

\$2,000,000 of the state building and construction account appropriation and the entire public facility construction loan revolving account appropriation in this subsection are provided solely for communities defined as timber-dependent under chapter 314, Laws of 1991 (Engrossed Substitute House Bill No. 1341). In allocating these funds, the community economic revitalization board shall give priority to communities experiencing high unemployment or high timber unemployment.

**Appropriation:**

Pub Fac Constr Loan Rev Acct . . . . .	\$	2,000,000
St Bldg Constr Acct . . . . .	\$	6,000,000
Subtotal Appropriation . . . . .	\$	8,000,000
Prior Biennia (Expenditures) . . . . .	\$	7,429,000
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	15,429,000

(2) Mt. St. Helens road and visitor center (90-5-002)

The appropriation in this subsection shall not exceed twenty-five percent of the total project cost and is contingent on a contribution of at least \$300,000 by Cowlitz county for the project.

**Reappropriation:**

St Bldg Constr Acct . . . . .	\$	3,700,000
Prior Biennia (Expenditures) . . . . .	\$	1,900,000
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	5,600,000

(3) Agricultural complex: Yakima (89-2-005)

The appropriation in this subsection is provided solely for moveable seating, electrical and utility work, parking lots, and landscaping to complete the Sun Dome facility and shall not be used for a separate multipurpose stadium facility. The condition in this subsection is consistent with the purpose and intent of the original appropriation in chapter 12, Laws of 1989 1st ex. sess.

The appropriation in this subsection is contingent on a contribution of an equal amount of funds from nonstate sources.

**Reappropriation:**

St Bldg Constr Acct . . . . .	\$	843,000
Prior Biennia (Expenditures) . . . . .	\$	3,157,000
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	4,000,000

(4) Washington Technology Center (88-1-003)

The appropriation in this subsection is provided solely for transfer to and administration by the University of Washington.

**Reappropriation:**

St Bldg Constr Acct .....	\$ 2,950,000
Prior Biennia (Expenditures) .....	\$ 12,852,000
Future Biennia (Projected Costs) .....	\$ 0
TOTAL .....	\$ 15,802,000

(5) Community economic revitalization board: For the unexpended balance of projects approved by the board during the 1989-91 biennium from the public facility construction loan revolving account, which was a nonappropriated fund at the time the projects were approved.

**Appropriation:**

Pub Fac Constr Loan Rev Acct .....	\$ 2,972,000
Prior Biennia (Expenditures) .....	\$ 0
Future Biennia (Projected Costs) .....	\$ 0
TOTAL .....	\$ 2,972,000

(6) Port infrastructure development projects

The appropriation in this subsection is provided solely for the port of Grays Harbor for paving an existing cargo storage yard and construction of a cargo storage facility. This appropriation is subject to a favorable review by the department of a proposal prepared by the port of Grays Harbor describing how this project will: (a) Have a high probability of success using standard economic principles; (b) provide long-term economic benefits to the community; (c) include local participation; and (d) be consistent with the community's economic strategy and goals.

**Appropriation:**

St Bldg Constr Acct .....	\$ 4,600,000
Prior Biennia (Expenditures) .....	\$ 0
Future Biennia (Projected Costs) .....	\$ 0
TOTAL .....	\$ 4,600,000

(7) Economic assessment study for timber-dependent ports

The appropriation in this subsection is provided solely for the department to contract for an economic assessment study of timber-dependent ports, limited to the ports of Grays Harbor, Port Angeles, and Longview. The study shall include the following: (a) A review and examination of the comparative advantage of each port's geographic and regional characteristics, and the characteristics of the three-port region, focusing on current and potential markets for exports and imports; (b) identification of specific diversification opportunities for the three-port region, including possibilities for expansion of nonlog export activities and opportunities; (c) identification of actions that each port can undertake to increase and develop business opportunities compatible with

regional port resources and goals; (d) recommendations for long-term strategies for the three-port region focusing on market development, facilities development, and operations and financial requirements; (e) strategies to enhance cooperation in future development that would allow each of the three ports to diversify in areas that would complement each other, including an analysis of recent, present, or potential competition among the ports; and (f) joint marketing strategies and joint capital facilities planning.

**Appropriation:**

<b>Pub Fac Constr Loan Rev Acct</b> . . . . .	\$	<b>150,000</b>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	<u>0</u>
<b>TOTAL</b> . . . . .	\$	<b>150,000</b>

**Sec. 3.** 1992 c 233 s 12 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

(1) Referendum 26: Waste disposal facilities (74-5-004)

**Reappropriation:**

<b>LIRA, Waste Disp Fac</b> . . . . .	\$	<del><b>((15,660,673))</b></del>
		<b><u>14,460,673</u></b>
Prior Biennia (Expenditures) . . . . .	\$	<del><b>((8,093,028))</b></del>
		<b><u>210,539,327</u></b>
Future Biennia (Projected Costs) . . . . .	\$	<u>0</u>
<b>TOTAL</b> . . . . .	\$	<del><b>((23,753,701))</b></del>
		<b><u>225,000,000</u></b>

(2) Referendum 38: Water supply facilities (74-5-006)

**Reappropriation:**

<b>LIRA, Water Sup Fac</b> . . . . .	\$	<b>26,744,618</b>
Prior Biennia (Expenditures) . . . . .	\$	2,466,576
Future Biennia (Projected Costs) . . . . .	\$	<u>29,763,000</u>
<b>TOTAL</b> . . . . .	\$	<b>58,974,194</b>

(3) State emergency water project revolving account (76-5-003)

**Reappropriation:**

<b>Emergency Water Proj</b> . . . . .	\$	<b>7,599,337</b>
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**Appropriation:**

<b>Emergency Water Proj</b> . . . . .	\$	<b>1,343,929</b>
Prior Biennia (Expenditures) . . . . .	\$	16,586,284
Future Biennia (Projected Costs) . . . . .	\$	<u>224,761</u>
<b>TOTAL</b> . . . . .	\$	<b>25,754,311</b>

(4) Referendum 39: Waste disposal facilities 1980 bond issue (82-5-005)

No expenditure from the reappropriation in this subsection shall be made for any grant valued over fifty million dollars to a city or county for solid waste disposal facilities unless the following conditions are met:

(a) The city or county agrees to comply with all the terms of the grant contract between the city or county and the department of ecology;

(b) The city or county agrees to implement curbside collection of recyclable materials as prescribed in the grant contract; and

(c) The city or county does not begin actual construction of the solid waste disposal facility until it has obtained a permit for prevention of significant deterioration as required by the federal clean air act.

**Reappropriation:**

<b>LIRA, Waste Disp Fac 1980 . . . . .</b>	<b>\$</b>	<b><del>((60,012,180))</del></b>
		<b><u>53,712,180</u></b>
Prior Biennia (Expenditures) . . . . .	\$	401,402,000
Future Biennia (Projected Costs) . . . . .	\$	<u>0</u>
<b>TOTAL . . . . .</b>	<b>\$</b>	<b><del>((461,414,180))</del></b>
		<b><u>455,114,180</u></b>

(5) Water quality account (86-5-007)

The appropriations in this subsection are subject to the following conditions and limitations:

(a) In awarding grants, extending grant payments, or making loans from these appropriations for facilities that discharge directly into marine waters, the department shall:

(i) Give first priority to secondary wastewater treatment facilities that are mandated by both federal and state law;

(ii) Give second priority to projects that reduce combined sewer overflows; and

(iii) Encourage economies that are derived from any simultaneous projects that achieve the purposes of both (a) and (b) of this subsection.

(b) The following limitations shall apply to the department's total distribution of funds appropriated under this section:

(i) Not more than fifty percent for water pollution control facilities that discharge directly into marine waters;

(ii) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie aquifer;

(iii) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;

(iv) Not more than ten percent for activities that control nonpoint source water pollution;

(v) Ten percent and such sums as may be remaining from the categories specified in (i) through (iv) of this subsection for water pollution control activities or facilities as determined by the department.

(c) In determining compliance schedules for the greatest reasonable reduction of combined sewer overflows, the department shall consider the amount of grant or loan moneys available to assist local governments in the planning, design, acquisition, construction, and improvement of combined sewer overflow facilities.

(d) \$330,000 of the water quality account appropriation is provided solely for the department to evaluate water quality, solid and hazardous waste, and toxics cleanup needs of the state. The amount provided in this subsection represents the water quality account share of funding the evaluation. The department shall include in the evaluation information regarding existing needs and recommendations on how to address those needs within existing state financial assistance programs. The department shall also evaluate long-range financial options which take into account local financial resources. The evaluation shall be done in coordination with the state agency coordinating council established in Engrossed Substitute House Bill No. 1025 (Growth Management Strategies). If the bill is not enacted by July 31, 1991, the director of the department shall coordinate with the department of community development, the department of health, and the Puget Sound water quality authority as well as with other appropriate state and local agencies. By November 1, 1991, the department shall submit to the chairs of the house capital facilities and financing committee and the senate ways and means committee, a detailed work plan, budget, and schedule for completion of the evaluation.

**Reappropriation:**

Water Quality Acct . . . . . \$ 134,422,504

**Appropriation:**

Water Quality Acct . . . . . \$ 85,607,310  
 Prior Biennia (Expenditures) . . . . . \$ 53,036,533  
 Future Biennia (Projected Costs) . . . . . \$ 157,835,000  
 TOTAL . . . . . \$ 430,901,347

(6) Nisqually River Interpretive Center

**Appropriation:**

St Bldg Constr Acct . . . . . \$ 150,000  
 Prior Biennia (Expenditures) . . . . . \$ 0  
 Future Biennia (Projected Costs) . . . . . \$ 0  
 TOTAL . . . . . \$ 150,000

(7) Local toxics control account (88-5-008)

\$270,000 of the new appropriation in this subsection is provided solely for the evaluation required in ~~((subsection))~~ section 12(5)(d) ~~((of this section))~~, chapter 233, Laws of 1992.

\$300,000 of the new appropriation in this subsection is provided solely for a pilot grant program to address remedial actions involving the contamination of drinking water supplies from hazardous substances. The pilot grant program is limited to remedial action where a responsible party has not been identified or held responsible. The department may establish an appropriate local match requirement for the pilot grant program. The department shall report to the appropriate committees of the legislature regarding the state-wide need for programs to clean up drinking water supplies contaminated by hazardous substances. This report shall be consolidated into the evaluation required in ~~((subsection))~~ section 12(5)(d) ((of this section)), chapter 233, Laws of 1992.

**Reappropriation:**

**Local Toxics Control** . . . . . \$ **27,653,297**

**Appropriation:**

**Local Toxics Control** . . . . . \$ **59,183,607**

Prior Biennia (Expenditures) . . . . . \$ 18,467,142

Future Biennia (Projected Costs) . . . . . \$ 106,984,641

**TOTAL** . . . . . \$ **212,288,687**

(8) Methow Basin water conservation

This appropriation in this subsection shall be used to fund water use efficiency improvements in this Methow Basin, including the installation of headworks, weirs, and fish screens on existing irrigation diversions, metering of miscellaneous water uses, and lining of irrigation canals and ditches in identified high priority irrigation systems.

**Appropriation:**

**St Bldg Constr Acct** . . . . . \$ **400,000**

**LIRA, Water Sup Fac** . . . . . \$ **800,000**

Subtotal Appropriation . . . . . \$ 1,200,000

Prior Biennia (Expenditures) . . . . . \$ 0

Future Biennia (Projected Costs) . . . . . \$ 0

**TOTAL** . . . . . \$ **1,200,000**

~~((40))~~ (9) Water pollution control facility loans

**Reappropriation:**

**Water Pollution Cont Rev**

**Fund—State** . . . . . \$ ~~((33,106,000))~~

**5,518,000**

**Water Pollution Cont Rev**

**Fund—Federal** . . . . . \$ **27,588,000**

**Subtotal Reappropriation** . . . . . \$ **33,106,000**

**Appropriation:**

**Water Pollution Cont Rev**

**Fund—State** . . . . . \$ ~~((83,047,000))~~

**13,843,934**

**Water Pollution Cont Rev**

<b><u>Fund—Federal</u></b> . . . . .	<b>\$</b>	<b><u>69,203,066</u></b>
<b><u>Subtotal Appropriation</u></b> . . . . .	<b>\$</b>	<b><u>83,047,000</u></b>
Prior Biennia (Expenditures) . . . . .	\$	7,400,000
Future Biennia (Projected Costs) . . . . .	\$	<u>71,000,000</u>
<b>TOTAL</b> . . . . .	<b>\$</b>	<b>194,553,000</b>

**NEW SECTION.** Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 22, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 137**

[Substitute House Bill 1003]

**INVOLUNTARY COMMITMENT—AUTHORITY OF PROSECUTING ATTORNEY  
TO REPRESENT CHEMICAL DEPENDENCY SPECIALIST OR PROGRAM**

**Effective Date: 7/25/93**

AN ACT Relating to involuntary commitment or detention; and adding a new section to chapter 70.96A RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 70.96A RCW to read as follows:

The prosecuting attorney of the county in which such action is taken may, at the discretion of the prosecuting attorney, represent the designated chemical dependency specialist or treatment program in judicial proceedings under RCW 70.96A.140 for the involuntary commitment or recommitment of an individual, including any judicial proceeding where the individual sought to be committed or recommitted challenges the action.

Passed the House February 8, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 138**

[Substitute House Bill 1454]

**"ACTING IN COURSE OF EMPLOYMENT" REDEFINED**

**Effective Date: 7/25/93**

AN ACT Relating to the definition of acting in the course of employment; and amending RCW 51.08.013.

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

**Sec. 1.** RCW 51.08.013 and 1979 c 111 s 15 are each amended to read as follows:

"Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area(~~s, and~~). It is not necessary that at the time an injury is sustained by a worker he or she ((be)) is doing the work on which his or her compensation is based or that the event ((be)) is within the time limits on which industrial insurance or medical aid premiums or assessments are paid. The term ((shall)) does not include time spent going to or coming from the employer's place of business: (a) In commuter ride sharing, as defined in RCW 46.74.010(1), notwithstanding any participation by the employer in the ride-sharing arrangement; or (b) on a public transport system using a pass provided in whole or part by the employer.

Passed the House March 8, 1993.  
Passed the Senate April 12, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 139**

[Substitute House Bill 1555]

**PUBLIC CORPORATIONS—TRANSFER OF UNENCUMBERED FUNDS  
TO CITY, COUNTY, OR PORT DISTRICT**

**Effective Date: 7/25/93**

AN ACT Relating to the use of administrative funds of a public corporation formed by a municipality; and amending RCW 39.84.130.

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

**Sec. 1.** RCW 39.84.130 and 1981 c 300 s 13 are each amended to read as follows:

No part of the proceeds received from the sale of any revenue bonds under this chapter, of any revenues derived from any industrial development facility acquired or held under this chapter, or of any interest realized on moneys received under this chapter may be commingled by the public corporation with



funds of the municipality creating the public corporation. However, those funds of the public corporation, other than proceeds received from the sale of revenue bonds, that are not otherwise encumbered for the payment of revenue bonds and are not reasonably anticipated by the board of directors to be necessary for administrative expenses of the public corporation may be transferred to the creating municipality and used for growth management, planning, or other economic development purposes.

Passed the House March 9, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 140

[Senate Bill 5060]

### INDETERMINATE SENTENCING—REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to indeterminate sentencing; amending RCW 9.95.040, 9.95.125, 9.95.130, and 9.96.050; and prescribing penalties.

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

**Sec. 1.** RCW 9.95.040 and 1992 c 7 s 24 are each amended to read as follows:

The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of the convicted person to a state correctional facility, the board shall fix the duration of confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which the person was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

The following limitations are placed on the board or the court for persons committed to a state correctional facility on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club,

sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years. ~~((The board shall retain jurisdiction over such convicted person throughout the person's natural life unless the governor by appropriate executive action orders otherwise.))~~

(4) Any person convicted of embezzling funds from any institution of public deposit of which the person was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of a state correctional facility has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: PROVIDED, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired.

Sec. 2. RCW 9.95.125 and 1969 c 98 s 7 are each amended to read as follows:

After the on-site parole revocation hearing has been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. For parole violations not resulting in new convictions, modified conditions of parole may include sanctions according to an administrative sanction grid. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution for convicted felons the board ~~((of prison terms and paroles))~~ shall enter an order determining a new minimum ~~((sentence,))~~ term not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court.

**Sec. 3.** RCW 9.95.130 and 1955 c 133 s 14 are each amended to read as follows:

From and after the suspension, cancellation, or revocation of the parole of any convicted person and until his or her return to custody ~~((he))~~ the convicted person shall be deemed an escapee and a fugitive from justice ~~((and no part of the time during which he is an escapee and fugitive from justice shall be a part of his term))~~. The indeterminate sentence review board may deny credit against the maximum sentence any time during which he or she is an escapee and fugitive from justice.

**Sec. 4.** RCW 9.96.050 and 1980 c 75 s 1 are each amended to read as follows:

When a prisoner on parole has performed the obligations of his or her release for such time as shall satisfy the indeterminate sentence review board ~~((of prison terms and paroles))~~ that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the prisoner. The board retains the jurisdiction to issue a certificate of discharge after the expiration of the prisoner's or parolee's maximum statutory sentence ~~((= PROVIDED, That no such order of discharge shall be made in any case within a period of less than one year from the date on which the board has conditionally discharged the parolee from active supervision by a probation and parole officer, except where the parolee's maximum statutory sentence expires earlier))~~. If not earlier granted, the board shall make a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years. Such discharge, regardless of when issued, shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certification of discharge shall so state. This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person.

Passed the Senate March 4, 1993.

Passed the House April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 141

[House Bill 1477]

## POWER TAKE-OFF UNITS—FUEL TAX EXEMPTIONS

Effective Date: 7/25/93

AN ACT Relating to fuel tax exemptions for power take-off units; and amending RCW 82.36.280 and 82.38.080.

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

**Sec. 1.** RCW 82.36.280 and 1985 c 371 s 5 are each amended to read as follows:

Any person who uses any motor vehicle fuel for the purpose of operating any internal combustion engine not used on or in conjunction with any motor vehicle licensed to be operated over and along any of the public highways, and as the motive power thereof, upon which motor vehicle fuel excise tax has been paid, shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. No refund shall be made for motor vehicle fuel consumed by any motor vehicle as herein defined that is required to be registered and licensed as provided in chapter 46.16 RCW; and is operated over and along any public highway except that a refund shall be allowed for motor vehicle fuel consumed:

(1) In a motor vehicle owned by the United States that is operated off the public highways for official use;

(2) By auxiliary equipment not used for motive power, provided such consumption is accurately measured by a metering device that has been specifically approved by the department or is established by either of the following formulae:

(a) For fuel used in pumping fuel or heating oils by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered: PROVIDED, That claimant when presenting his claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of fuel oil delivered, or such other appropriate information as may be required by the department to substantiate his claim; or

(b) For fuel used in operating a power take-off unit on a cement mixer truck or load compactor on a garbage truck, claimant shall be allowed a refund of twenty-five percent of the tax paid on all fuel used in such a truck; and

(c) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter; and

(3) Before December 31, 1992, in a commercial vehicle as defined in RCW 46.04.140 or a farm vehicle as defined in RCW 46.04.181, if the motor vehicle fuel consumed contains nine and one-half percent or more by volume of alcohol and the commercial vehicle or farm vehicle is operated off the public highways of this state.

**Sec. 2.** RCW 82.38.080 and 1990 c 185 s 1 are each amended to read as follows:

There is exempted from the tax imposed by this chapter, the use of fuel for:

- (1) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality;
- (2) publicly owned fire fighting equipment;
- (3) special mobile equipment as defined in RCW 46.04.552;
- (4) power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by either of the following formulae: (a) Pumping propane, or fuel or heating oils or milk picked up from a farm or dairy farm storage tank by a power take-off unit on a delivery truck, at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered or milk picked up: **PROVIDED, That claimant when presenting his claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his claim; or (b) operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; and (c) the department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible.**

The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter; (5) motor vehicles owned and operated by the United States government; (6) heating purposes; (7) moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle; (8) transit services for only elderly or handicapped persons, or both, by a private, nonprofit transportation provider certified under chapter 81.66 RCW; and (9) notwithstanding any provision of law to the contrary, every urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles and/or

trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds or credits shall be granted on fuel used by any urban transportation vehicle or vehicle operated pursuant to chapters 81.68 and 81.70 RCW on any trip where any portion of said trip is more than twenty-five road miles beyond the corporate limits of the county in which said trip originated.

Passed the House March 9, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 142

[House Bill 1618]

### TERMINATION OF DEFUNCT BOARDS, COMMISSIONS, AND COMMITTEES

Effective Date: 7/25/93

AN ACT Relating to terminating defunct boards, commissions, and committees; amending RCW 43.240.911, 19.02.020, 19.02.030, and 43.06.010; and repealing RCW 19.02.038, 19.02.040, 43.21F.047, 43.57.010, 43.57.020, 43.57.030, 43.131.115, 43.131.118, 43.131.120, 43.136.060, and 49.30.030.

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

NEW SECTION. **Sec. 1.** The following acts or parts of acts are each repealed:

- (1) RCW 19.02.038 and 1982 c 182 s 13;
- (2) RCW 19.02.040 and 1989 1st ex.s. c 9 s 316, 1987 c 505 s 6, 1985 c 466 s 37, 1982 c 182 s 5, 1979 c 158 s 77, & 1977 ex.s. c 319 s 4;
- (3) RCW 43.21F.047 and 1991 c 201 s 1;
- (4) RCW 43.57.010 and 1965 c 8 s 43.57.010;
- (5) RCW 43.57.020 and 1984 c 287 s 83, 1975-'76 2nd ex.s. c 34 s 119, 1965 ex.s. c 164 s 1, & 1965 c 8 s 43.57.020;
- (6) RCW 43.57.030 and 1965 c 8 s 43.57.030;
- (7) RCW 43.131.115 and 1983 1st ex.s. c 27 s 5;
- (8) RCW 43.131.118 and 1983 1st ex.s. c 27 s 6;
- (9) RCW 43.131.120 and 1983 1st ex.s. c 27 s 7, 1979 c 22 s 2, & 1977 ex.s. c 289 s 12;
- (10) RCW 43.136.060 and 1982 1st ex.s. c 35 s 44; and
- (11) RCW 49.30.030 and 1989 c 380 s 85.

**Sec. 2.** RCW 43.240.911 and 1988 c 186 s 10 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~1994~~) 1993:

- (1) Section 9, chapter 467, Laws of 1985 and RCW 43.240.010;
- (2) Section 10, chapter 467, Laws of 1985 and RCW 43.240.020;
- (3) Section 11, chapter 467, Laws of 1985, section 15, chapter 195, Laws of 1987 and RCW 43.240.030,
- (4) Section 12, chapter 467, Laws of 1985 and RCW 43.240.040;
- (5) Section 13, chapter 467, Laws of 1985 and RCW 43.240.050;
- (6) Section 14, chapter 467, Laws of 1985 and RCW 43.240.060; and
- (7) Section 16, chapter 467, Laws of 1985 and RCW 43.240.070.

**Sec. 3.** RCW 19.02.020 and 1992 c 107 s 1 are each amended to read as follows:

As used in this chapter, the following words shall have the following meanings:

(1) "System" means the mechanism by which master licenses are issued and renewed, license and regulatory information is disseminated, and account data is exchanged by the agencies;

(2) "Business license center" means the business registration and licensing center established by this chapter and located in and under the administrative control of the department of licensing;

~~(3) ("Board of review" means the body established to review policies and rules adopted by the department of licensing for carrying out the provisions of this chapter;~~

~~(4))~~ (4) "Master application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter;

~~((5))~~ (4) "Master license" means the single document designed for public display issued by the business license center which certifies state agency license approval and which incorporates the endorsements for individual licenses included in the master license system, which the state requires for any person subject to this chapter;

~~((6))~~ (5) "License" means the whole or part of any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity;

~~((7))~~ (6) "Regulatory" means all licensing and other governmental or statutory requirements pertaining to business or professional activities;

~~((8))~~ (7) "Person" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization required to register with the state to do business in the state and to obtain one or more licenses from the state or any of its agencies;

~~((9))~~ (8) "Director" means the director of licensing;

~~((10))~~ (9) "Department" means the department of licensing;

~~((11))~~ (10) "Regulatory agency" means any state agency, board, commission, or division which regulates one or more professions, occupations, industries, businesses, or activities;

~~((12))~~ (11) "Renewal application" means a document used to collect pertinent data for renewal of licenses covered under this chapter; and

~~((13))~~ (12) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request.

**Sec. 4.** RCW 19.02.030 and 1982 c 182 s 3 are each amended to read as follows:

(1) There is created within the department of licensing a business license center.

(2) The duties of the center shall include:

(a) Developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing master licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered master license renewal;

(d) Identifying types of licenses appropriate for inclusion in the master license system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the master license system.

(3) The department of licensing shall establish the position of assistant director of the business license center (~~((who will also act as executive secretary to the board of review))~~).

(4) The director of licensing may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter. (~~((All proposed rules shall be submitted in writing to the board of review for its review and recommendations:))~~)

**Sec. 5.** RCW 43.06.010 and 1992 c 172 s 1 are each amended to read as follows:

In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

(1) The governor shall supervise the conduct of all executive and ministerial offices;

(2) The governor shall see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

(3) The governor shall make the appointments and supply the vacancies mentioned in this title;



(4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;

(5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of his duties;

(8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;

(9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;

(10) The governor shall issue and transmit election proclamations as prescribed by law;

(11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;

(12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;

(13) ~~((The governor shall, when appropriate, submit to the select joint committee created by RCW 43.131.120, lists of state agencies, as defined by RCW 43.131.030, which agencies might appropriately be scheduled for termination by a bill proposed by the select joint committee;~~

~~((14)))~~ The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in RCW 17.24.007 or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides;

~~((15)))~~ (14) On all compacts forwarded to the governor pursuant to RCW 9.46.360(6), the governor is authorized and empowered to execute on behalf of

the state compacts with federally recognized Indian tribes in the state of Washington pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III gaming, as defined in the Act, on Indian lands.

Passed the House March 9, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 143

[House Bill 1865]

### CHECK CASHERS AND SELLERS—SUPERVISOR OF BANKING ENFORCEMENT POWERS REGARDING UNLICENSED OPERATION

Effective Date: 7/25/93

AN ACT Relating to powers of the supervisor of banking to prevent check cashers and sellers from operating without a required license; and amending RCW 31.45.010.

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

**Sec. 1.** RCW 31.45.010 and 1991 c 355 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of or selling checks, drafts, money orders, or other commercial paper serving the same purpose.

(3) "Licensee" means a check casher or seller licensed by the supervisor to engage in business in accordance with this chapter. For purposes of the enforcement powers of this chapter, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by this chapter.

(4) "Supervisor" means the supervisor of banking.

Passed the House March 9, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 144

[Substitute House Bill 1343]

## BATTERED PERSON—REDUCTION IN SENTENCE FOR MURDER OF BATTERER

Effective Date: 4/30/93

AN ACT Relating to reducing the sentence of a person convicted of murder who alleges that the murder was in response to the victim's continuing pattern of physical or sexual abuse of the person or the person's children; amending RCW 9.95.011 and 9.95.040; adding new sections to chapter 9.95 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 72.02 RCW; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 9.95 RCW to read as follows:

(1) An inmate convicted of murder may petition the indeterminate sentence review board to review the inmate's sentence if the petition alleges the following:

(a) The inmate was sentenced for a murder committed prior to July 23, 1989, which was the effective date of section 1, chapter 408, Laws of 1989, as codified in RCW 9.94A.390(1)(h). RCW 9.94A.390(1)(h) provides that the sentencing court may consider as a mitigating factor evidence that the defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense was a response to that abuse;

(b) RCW 9.94A.390(1)(h), if effective when the defendant committed the crime, would have provided a basis for the defendant to seek a mitigated sentence; and

(c) The sentencing court when determining what sentence to impose, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) An inmate who seeks to have his or her sentence reviewed under this section must petition the board for review no later than October 1, 1993. The petition may be by letter requesting review.

(3)(a) If the inmate was convicted of a murder committed prior to July 1, 1984, and the inmate is under the jurisdiction of the indeterminate sentence review board, the board shall conduct the review as provided in section 2 of this act. If the inmate was sentenced pursuant to chapter 9.94A RCW for a murder committed after June 30, 1984, but before July 23, 1989, the board shall conduct the review and may make appropriate recommendations to the sentencing court as provided in section 5 of this act. The board shall complete its review of the petitions and submit recommendations to the sentencing courts or their successors by October 1, 1994.

(b) When reviewing petitions, the board shall solicit recommendations from the prosecuting attorneys of the counties where the petitioners were convicted, and shall accept input from other interested parties.

**NEW SECTION.** Sec. 2. A new section is added to chapter 9.95 RCW to read as follows:

(1) If an inmate under the board's jurisdiction files a petition for review under section 1 of this act, the board shall review the duration of the inmate's confinement, including review of the minimum term and parole eligibility review dates. The board shall consider whether:

(a) The petitioner was convicted for a murder committed prior to the effective date of RCW 9.94A.390(1)(h);

(b) RCW 9.94A.390(1)(h), if effective when the petitioner committed the crime, would have provided a basis for the petitioner to seek a mitigated sentence; and

(c) The sentencing court and prosecuting attorney, when making their minimum term recommendations, considered evidence that the victim subjected the petitioner or the petitioner's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The board may reset the minimum term and parole eligibility review date of a petitioner convicted of murder if the board finds that had RCW 9.94A.390(1)(h) been effective when the petitioner committed the crime, the petitioner may have received an exceptional mitigating sentence.

**Sec. 3.** RCW 9.95.011 and 1986 c 224 s 7 are each amended to read as follows:

When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.040, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, ~~((or))~~ 9.95.125, or section 2 of this act.

**Sec. 4.** RCW 9.95.040 and 1992 c 7 s 24 are each amended to read as follows:

The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of the convicted person to a state correctional

facility, the board shall fix the duration of confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which the person was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

Subject to section 2 of this act, the following limitations are placed on the board or the court for persons committed to a state correctional facility on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years. The board shall retain jurisdiction over such convicted person throughout the person's natural life unless the governor by appropriate executive action orders otherwise.

(4) Any person convicted of embezzling funds from any institution of public deposit of which the person was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of a state correctional facility has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: PROVIDED, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired.

NEW SECTION. Sec. 5. A new section is added to chapter 9.94A RCW to read as follows:

(1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing defendants

convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The defendant was convicted for a murder committed prior to the effective date of RCW 9.94A.390(1)(h);

(b) RCW 9.94A.390(1)(h), if effective when the defendant committed the crime, would have provided a basis for the defendant to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the defendant for the murder, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the defendant in light of RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the defendant committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed.

**NEW SECTION.** Sec. 6. A new section is added to chapter 72.02 RCW to read as follows:

The department shall advise all inmates in the department's custody who were convicted of a murder that the inmate committed prior to July 23, 1989, about the provisions in sections 1, 2, and 5 of this act. The department shall advise the inmates of the method and deadline for submitting petitions to the indeterminate sentence review board for review of the inmate's sentence. The department shall issue the notice to the inmates no later than July 1, 1993.

**NEW SECTION.** Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 16, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 145

[House Bill 2069]

COLLEGES AND UNIVERSITIES—CHECK CASHING  
FOR STUDENTS AND EMPLOYEES

Effective Date: 7/25/93

AN ACT Relating to check cashing by any institution of higher education; and adding a new section to chapter 28B.10 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Any institution of higher education may, at its option and after the approval by governing boards, accept in exchange for cash a payroll check, expense check, financial aid check, or personal check from a student or employee of that institution of higher education in accordance with the following conditions:

(a) The check shall be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(b) The person presenting the check to the institution of higher education shall produce identification that he or she is currently enrolled or employed at the institution of higher education; and

(c) The payroll check, expense check, or financial aid check shall have been issued by the institution of higher education.

(2) In the event that any personal check cashed under this section is dishonored by the drawee financial institution when presented for payment, the institution of higher education, after giving notice of the dishonor to the student or employee and providing an opportunity for a brief adjudicative proceeding, may:

(a) In the case of a student, place a hold on the student's enrollment and transcript records until payment in full of the value of the dishonored check and reasonable collection fees and costs;

(b) In the case of an employee, withhold from the next payroll check or expense check the full amount of the dishonored check plus a collection fee. In the case that the employee no longer is employed by the institution of higher education at time of dishonor, then the institution of higher education may pursue other legal collection efforts that are to be paid by the drawer or endorser of the dishonored check along with the full value of the check.

Passed the House March 13, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

CHAPTER 146

[Senate Bill 5494]

AT-RISK JUVENILE SEX OFFENDERS

Effective Date: 7/25/93

AN ACT Relating to at-risk juvenile sex offenders; and amending RCW 74.13.075.

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

Sec. 1. RCW 74.13.075 and 1990 c 3 s 305 are each amended to read as follows:

(1) For the purposes of funds appropriated for the treatment of at-risk juvenile sex offenders, "at-risk juvenile sex offenders" means those juveniles who are the subject of a proceeding under chapter 13.34 RCW or in the care and custody of the state who:

(a) Have been abused; and

(b) Have committed a sexually aggressive or other violent act that is sexual in nature; or

(c) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

(a) The age of the juvenile;

(b) The extent and type of abuse to which the juvenile has been subjected;

(c) The juvenile's past conduct;

(d) The benefits that can be expected from the treatment; and

(e) The cost of the treatment.

Passed the Senate March 16, 1993.

Passed the House April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.



## CHAPTER 147

[Substitute Senate Bill 5556]

STATE SCHOOLS FOR THE BLIND AND THE DEAF—REVISED POWERS,  
DUTIES, AND FUNCTIONS

Effective Date: 7/25/93

AN ACT Relating to state schools for the blind, deaf, and sensory impaired; amending RCW 72.40.022, 72.40.024, 72.40.040, 72.40.080, 72.40.090, 72.40.110, 72.41.020, 72.41.070, 72.42.020, and 72.42.070; and repealing RCW 72.41.080 and 72.42.080.

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

**Sec. 1.** RCW 72.40.022 and 1985 c 378 s 15 are each amended to read as follows:

In addition to any other powers and duties prescribed by law, the superintendent of the state school for the blind and the superintendent of the state school for the deaf:

(1) Shall have full control of their respective schools and the property of various kinds.

(2) May establish criteria, in addition to state certification, for teachers at their respective schools.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the advice of the respective boards of trustees.

(5) May establish new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as deemed necessary for the government, management, and operation of the housing facilities.

(7) Shall control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of their respective schools.

(8) May adopt rules for pedestrian and vehicular traffic on property owned, operated, and maintained by the respective schools.

(9) Purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of their respective schools.

(10) Except as otherwise provided by law, may enter into contracts as each superintendent deems essential to the respective purposes of their schools.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the respective schools; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) ~~((May contract with the department of social and health services for management consultant or other services which the department, if requested, shall provide.~~

~~(13))~~ (13) May, except as otherwise provided by law, enter into contracts as the superintendents deem essential for the operation of their respective schools.

~~((14) Shall))~~ (13) May adopt rules providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

~~((15))~~ (14) Shall prepare and administer their respective budgets consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

~~((16))~~ (15) May adopt rules under chapter 34.05 RCW and perform all other acts not forbidden by law as the superintendents deem necessary or appropriate to the administration of their respective schools.

**Sec. 2.** RCW 72.40.024 and 1985 c 378 s 17 are each amended to read as follows:

In addition to the powers and duties under RCW 72.40.022, the superintendent of each school shall:

(1) Monitor the location and educational placement of each student reported to the superintendents by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superintendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction, provide instructional leadership, and assist school districts in improving their instructional programs for students with visual or hearing impairments.

**Sec. 3.** RCW 72.40.040 and 1985 c 378 s 19 are each amended to read as follows:

The schools shall be free to residents of the state between the ages of ~~((five and twenty one years until the 1984-85 school year, between the ages of four and twenty one years commencing with the 1984-85 school year, and between the ages of three and twenty one years commencing with the 1985-86 school year and who are visually or hearing impaired or otherwise sensory handicapped with problems of learning originating mainly due to a visual or auditory deficiency))~~ three and twenty-one years, who are blind/visually impaired or deaf/hearing impaired, or with other disabilities where a vision or hearing disability is the major need for services. The schools may provide nonresidential services to children ages birth through three who meet the eligibility criteria in this section, subject to available funding. Each school shall admit and retain students on a space available basis according to criteria developed and published by each school superintendent in consultation with each board of trustees and school

faculty: PROVIDED, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training.

**Sec. 4.** RCW 72.40.080 and 1985 c 378 s 23 are each amended to read as follows:

It shall be the duty of the parents or the guardians of all such visually or hearing impaired youth to send them each year to the proper school (~~or institution~~). Full and due consideration shall be given to the parent's or guardian's preference as to which program the child should attend. The educational service district superintendent shall take all action necessary to enforce this section.

**Sec. 5.** RCW 72.40.090 and 1985 c 378 s 24 are each amended to read as follows:

~~((If it appears to the satisfaction of the board of county commissioners that the parents of any such visually or hearing impaired youth within their county are unable to bear the expense of transportation to and from the state schools, it shall send them to and return them from the schools or maintain them there during vacation at the expense of the county. Nothing in this section shall be construed as prohibiting the superintendents from authorizing or incurring such travel expenses for the purpose of transporting such visually or hearing impaired youth to and from points within this state during weekends and/or vacation periods. For the purposes of this section, the superintendents shall impose no conditions upon parents or guardians specifying the number of weekends such persons shall take custody of hearing or visually impaired students.))~~ Notwithstanding any other provision of law, the state school for the blind and the school for the deaf may arrange and provide for weekend transportation to and from schools. This transportation shall be at no cost to students and parents, as allowed within the appropriations allocated to the schools.

**Sec. 6.** RCW 72.40.110 and 1985 c 378 s 12 are each amended to read as follows:

~~((The hours of labor for each full-time employee shall be a maximum of eight hours in any work day and forty hours in any work week.~~

~~Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one one hundred and seventy-sixth of the employee's gross monthly salary. If an employee is granted compensatory time off, such time off should be given within the calendar year and if such an arrangement is not possible the employee shall be given a premium rate of pay. However, compensatory time or payment in lieu thereof shall be allowed only for overtime as is duly authorized and accounted for under rules by each superintendent.))~~

Employees' hours of labor shall follow all state merit rules as they pertain to various work classifications and current collective bargaining agreements.

**Sec. 7.** RCW 72.41.020 and 1985 c 378 s 29 are each amended to read as follows:

There is hereby created a board of trustees for the state school for the blind to be composed of a resident from each of the state's congressional districts now or hereafter existing. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a representative of the national federation of the blind of Washington, (~~a representative of the united blind of Washington state,~~) one representative designated by the teacher association of the Washington state school for the blind, and a (~~houseparent designated by the houseparents<sup>2</sup>~~) representative of the classified staff designated by his or her exclusive bargaining representative shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator, appointed after July 1, 1986, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may convene from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board.

**Sec. 8.** RCW 72.41.070 and 1973 c 118 s 7 are each amended to read as follows:

The board of trustees shall meet at least (~~six times each year~~) quarterly.

**Sec. 9.** RCW 72.42.020 and 1985 c 378 s 33 are each amended to read as follows:

There is hereby created a board of trustees for the state school for the deaf to be composed of a resident from each of the state's congressional districts. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. The president of the ~~((parent-teacher-house organization of the school for the deaf, a houseparent selected by the houseparents'))~~ parent-staff organization of the school for the deaf, a representative of the classified staff designated by their exclusive bargaining representative, one representative designated by the ((teacher)) Teachers' Association of the school for the deaf, and the president of the Washington State Association for the Deaf shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts, as now or hereafter existing. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the deaf, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator appointed after July 1, 1986, or an elected officer or member of the legislative authority of any municipal corporation.

The board of trustees shall organize itself by electing a chairperson, vice-chairperson, and secretary from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations.

**Sec. 10.** RCW 72.42.070 and 1972 ex.s. c 96 s 7 are each amended to read as follows:

The board of trustees shall meet at least ~~((six times each year))~~ quarterly.

NEW SECTION. **Sec. 11.** The following acts or parts of acts are each repealed:

- (1) RCW 72.41.080 and 1973 c 118 s 8; and
- (2) RCW 72.42.080 and 1972 ex.s. c 96 s 8.

Passed the Senate April 18, 1993.  
Passed the House April 8, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 148**

[Engrossed Senate Bill 5694]

**OUT-OF-STATE FIFTEEN YEAR OLD DRIVERS—AUTHORITY TO DRIVE  
WITH VALID PERMIT**

**Effective Date:** 7/25/93

AN ACT Relating to driving with an instruction permit; and amending RCW 46.20.025.

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

**Sec. 1.** RCW 46.20.025 and 1979 c 75 s 1 are each amended to read as follows:

The following persons are exempt from license hereunder:

(1) Any person in the service of the army, navy, air force, marine corps, or coast guard of the United States, or in the service of the national guard of this state or any other state, when furnished with a driver's license by such service when operating an official motor vehicle in such service;

(2) A nonresident who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to him or her in his or her home state or is at least fifteen years of age with a valid instruction permit issued to him or her in his or her home state, and when accompanied by a licensed driver who has had at least five years of driving experience and is occupying a seat beside the driver;

(3) A nonresident who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to him or her in his or her home country may operate a motor vehicle in this state for a period not to exceed one year;

(4) Any person operating special highway construction equipment as defined in RCW 46.16.010;

(5) Any person while driving or operating any farm tractor or implement of husbandry which is only incidentally operated or moved over a highway;

(6) Any person while operating a locomotive upon rails, including operation on a railroad crossing over a public highway; and such person is not required to display a driver's license to any law enforcement officer in connection with the operation of a locomotive or train within this state.

Passed the Senate April 18, 1993.  
 Passed the House April 6, 1993.  
 Approved by the Governor April 30, 1993.  
 Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 149

[Substitute Senate Bill 5727]

### SPECIAL EDUCATION PROGRAMS—BILLING OF INSURERS FOR MEDICAL SERVICES PROVIDED AUTHORIZED

**Effective Date:** 4/30/93 - Except Section 11 which becomes effective on 9/1/93

AN ACT Relating to health services provided by school districts; amending RCW 28A.150.390 and 74.09.520; adding a new section to chapter 28A.155 RCW; adding new sections to chapter 74.09 RCW; creating new sections; repealing RCW 74.09.524; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds that there is increasing demand for medical services provided through the state's special education programs and that many of these services qualify for federal financial participation under Title XIX of the federal social security act. The legislature further finds that these services may be covered under private insurance policies. The legislature intends to establish a state-wide system of billing medicaid and private insurers for eligible medical services provided through special education programs, in order that federal funding of medical services in special education programs will be maximized and that additional revenue be made available for education programs. It is the further intent of the legislature that the program be administered by a public or private agency in such a fashion as to ensure that the additional administrative workloads for the districts and the health practitioners in the schools are kept to a minimum.

**NEW SECTION. Sec. 2.** For the purposes of sections 1 through 8 of this act, the terms "medical assistance" and "medicaid" mean medical care provided under Title XIX of the federal social security act.

**NEW SECTION. Sec. 3.** The superintendent of public instruction shall take necessary steps to establish a competitive bidding process for a contract to act as the state's billing agent for medical services provided through its special education programs. The process must be open to private firms and public entities.

**NEW SECTION. Sec. 4.** (1) Chapter . . . , Laws of 1993 (this act) does not apply to contracts between individual school districts and private firms entered in to for the purpose of billing either medicaid or private insurers, or both, for health services and agreed to before the effective date of this act, except as provided in section 8(2) of this act.

(2) A school district may elect to act as its own billing agent as of the start of any school year. For a school district being served by the state-wide billing agent, the district shall notify the billing agent in writing, no less than thirty days before the start of the school year, of its intent to terminate the agency relationship. A district that acts as its own billing agent may retain an administrative fee proportional to that of the state-wide billing agent.

**NEW SECTION. Sec. 5.** (1) The agency awarded the contract under section 3 of this act shall:

(a) Enroll all school districts in this state, except those with preexisting contracts under section 4 of this act, as medicaid providers by the beginning of the 1993-94 school year;

(b) Develop a state-wide system of billing the department and private insurers for medical services provided in special education programs;

(c) Train health care practitioners employed by or contracting with school districts in medicaid and insurer billing;

(d) Verify the medicaid eligibility of students enrolled in special education programs in each educational service district;

(e) Provide ongoing technical assistance to practitioners and districts; and

(f) Process and forward all medicaid claims to the department and all other claims to private insurers.

(2) For each student, individual school districts may, in consultation with the billing agent, deliver to the student's parent or guardian a letter, prepared by the billing agent, requesting the consent of the parent or guardian to bill the student's health insurance carrier for services provided through the special education program. If a district chooses to do this, the letter must be accompanied by a consent form, on which the parent may identify the student's health insurance carrier so that the billing agent may bill the carrier for medical services provided to the student. The letter must clearly state the following:

(a) That the billing program is designed in part to raise additional funds to improve education services;

(b) That under no circumstances will the parent or guardian be personally charged for any portion of the bill not paid by the insurer, including copayments, deductibles, or uncovered services;

(c) That the amount of the billing will apply to the policy's annual deductible even though the parent will not be billed for the amount of the deductible;

(d) That the amount of the billing, will, however, apply towards annual or lifetime benefit caps if these are included in the policy;

(e) That it is possible that their premiums would be increased as a result of their consent;

(f) That if any of the possible negative consequences of consent were to affect them, they are free to withdraw their consent at any time; and



(g) That their consent is entirely voluntary and that the services the student receives through the school will not be affected by their willingness or refusal to consent to the billing of their private insurer.

**NEW SECTION.** Sec. 6. The medical assistance administration in the department of social and health services shall establish categories of medical services and a reimbursement system based on the costs of providing medical services provided in special education programs.

**NEW SECTION.** Sec. 7. (1) Each educational service district in the state shall participate in the program of billing for medical services under section 5 of this act and shall provide the billing agent with a list, at the start of each academic quarter, of all students enrolled in special education programs within the area served by the educational service district, for purposes of verifying the medicaid eligibility of the students.

(2) A person employed by or contracting with a school district who provides services within the categories established by the medical assistance administration under section 6 of this act shall provide the billing agent with information necessary to promptly complete monthly billings for each medicaid-eligible student he or she serves.

(3) The superintendent of public instruction shall submit to the legislature at the beginning of each legislative session a report indicating the district-by-district participation and the medicaid and private insurance payment receipts during the preceding fiscal year. The report must further indicate for each district the total number of special education students, and the medicaid eligibility rate, as determined by the medical assistance administration. The superintendent may require a letter of explanation from any district whose receipts under the program, in the judgment of the superintendent, indicate nonparticipation or underparticipation.

**NEW SECTION.** Sec. 8. A new section is added to chapter 28A.155 RCW to read as follows:

(1) Of the projected federal and private insurance revenue collected under section 5 of this act, the following incentive payments, calculated after deduction of the agent's fees, shall remain with the school districts: Twenty percent of the federal portion of medicaid payments; and twenty percent of payments made by private insurers. The billing agent shall periodically provide the office of the superintendent of public instruction and each educational service district with a report showing for each individual school district the total amount of federal funds, less the billing agent's fee, realized through medicaid billing and the total amount, less the billing agent's fee, realized through the billing of private insurers. The superintendent shall use the report to reduce allocations to the districts by eighty percent of the total amount of medicaid and private insurance payments received by each district, calculated after deduction of the billing agent's fee.

(2) A firm that is a party to a preexisting contract under section 4(1) of this act shall, at times designated by the superintendent of public instruction, provide the office of the superintendent of public instruction and the appropriate educational service district with a report indicating the total amount of federal money and private insurance money, less the contractor's fee, earned by each district through billing for health services. The superintendent shall reduce allocations to the districts by eighty percent of the total amount of medicaid and private insurance payments received by each district, calculated after deduction of the contractor's fee.

(3) A school district that has elected to act as its own billing agent under section 4(2) of this act shall, at times designated by the superintendent of public instruction, provide the office of the superintendent of public instruction and the appropriate educational service district with a report indicating the total amount of federal money and private insurance money received by the district. The superintendent shall reduce allocations to the district by eighty percent of the total amount of medicaid and private insurance payments received by the district, calculated after deduction of administrative fees retained by the district.

(4) For the purposes of this section, "medicaid" means medical care provided under Title XIX of the federal social security act.

**Sec. 9.** RCW 28A.150.390 and 1990 c 33 s 116 are each amended to read as follows:

The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for handicapped programs. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for handicapped programs and shall take account of state funds accruing through RCW 28A.150.250, 28A.150.260, federal medical assistance and private funds accruing under section 5 of this act, and other state and local funds, excluding special excess levies. (~~Funding for local district programs may include payments from state and federal funds for medical assistance provided under RCW 74.09.500 through 74.09.910.~~) However, the superintendent of public instruction shall reimburse the department of social and health services from state appropriations for handicapped education programs for the state-funded portion of any medical assistance payment made by the department for services provided under an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100. The amount of such interagency reimbursement shall be deducted by the superintendent of public instruction in determining additional allocations to districts for handicapped education programs under this section.

**Sec. 10.** RCW 74.09.520 and 1991 sp.s. c 8 s 9 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other

laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a ~~((handicapped))~~ child by a school district ~~((as part of an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100))~~ in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services. ~~((Services included in an individualized education program for a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not qualify as medical assistance prior to the implementation of the funding process developed under RCW 74.09.524.))~~

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved by a physician and reviewed by a nurse every ninety days.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds. The hospice benefit under this section shall terminate on June 30, 1993, unless extended by the legislature.

NEW SECTION. **Sec. 11.** RCW 74.09.524 and 1990 c 33 s 595 & 1989 c 400 s 4 are each repealed.

NEW SECTION. **Sec. 12.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec. 13.** 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. 14.** Sections 2 through 7 of this act are each added to chapter 74.09 RCW.

NEW SECTION. **Sec. 15.** (1) Sections 1 through 10 and 12 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

(2) Section 11 of this act takes effect September 1, 1993.

Passed the Senate April 14, 1993.

Passed the House April 18, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 150

[Substitute House Bill 1915]

## AIRCRAFT NOISE ABATEMENT—ASSISTANCE TO INDIVIDUAL PROPERTIES

Effective Date: 7/25/93

AN ACT Relating to aircraft noise abatement; and amending RCW 53.54.030.

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

**Sec. 1.** RCW 53.54.030 and 1985 c 115 s 1 are each amended to read as follows:

For the purposes of this chapter, in developing a remedial program, the port commission may utilize one or more of the following programs:

(1) Acquisition of property or property rights within the impacted area, which shall be deemed necessary to accomplish a port purpose. The port district may purchase such property or property rights by time payment notwithstanding the time limitations provided for in RCW 53.08.010. The port district may mortgage or otherwise pledge any such properties acquired to secure such transactions. The port district may assume any outstanding mortgages.

(2) Transaction assistance programs, including assistance with real estate fees and mortgage assistance, and other neighborhood remedial programs as compensation for impacts due to aircraft noise and noise associated conditions. Any such programs shall be in connection with properties located within an impacted area and shall be provided upon terms and conditions as the port district shall determine appropriate.

(3) Programs of soundproofing structures located within an impacted area. Such programs may be executed without regard to the ownership, provided the owner waives ~~((aH))~~ damages and conveys ~~((a full and unrestricted))~~ an easement for the operation of ~~((aH))~~ aircraft, and for ~~((aH))~~ noise and noise associated conditions therewith, to the port district.

(4) Mortgage insurance of private owners of lands or improvements within such noise impacted area where such private owners are unable to obtain mortgage insurance solely because of noise impact. In this regard, the port district may establish reasonable regulations and may impose reasonable conditions and charges upon the granting of such mortgage insurance: PROVIDED, That such fees and charges shall at no time exceed fees established for federal mortgage insurance programs for like service.

(5) An individual property may be provided benefits by the port district under each of the programs described in subsections (1) through (4) of this section. However, an individual property may not be provided benefits under any one of these programs more than once, unless the property is subjected to increased aircraft noise or differing aircraft noise impacts that would have afforded different levels of mitigation, even if the property owner had waived all damages and conveyed a full and unrestricted easement.

(6) Management of all lands, easements, or development rights acquired, including but not limited to the following:

- (a) Rental of any or all lands or structures acquired;
- (b) Redevelopment of any such lands for any economic use consistent with airport operations, local zoning and the state environmental policy;
- (c) Sale of such properties for cash or for time payment and subjection of such property to mortgage or other security transaction: PROVIDED, That any such sale shall reserve to the port district by covenant an unconditional right of easement for the operation of all aircraft and for all noise or noise conditions associated therewith.

(7) A property shall be considered within the impacted area if any part thereof is within the impacted area.

Passed the House March 8, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 151**

[House Bill 2073]

**PROPERTY TAX EXEMPTION FOR NONPROFIT HOMES FOR THE AGING**

**Effective Date: 7/25/93**

AN ACT Relating to the eligibility of nonprofit homes for the aging for exemption from property taxation; amending RCW 84.36.041; and creating a new section.

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

**Sec. 1.** RCW 84.36.041 and 1992 c 213 s 1 are each amended to read as follows:

(1) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents; or

(b) The home is subsidized under a federal department of housing and urban development program. The department of revenue shall provide by rule a definition of homes eligible for exemption under this subsection (b), consistent with the purposes of this section.

(2) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and the construction, rehabilitation, acquisition, or refinancing of the home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses the tax exempt bonds and the financing program requires the home to reserve a percentage of all dwelling units so financed for low-income residents. The initial term of the exemption under this subsection shall equal the term of the tax exempt bond used in connection with

the financing program, or the term of the requirement to reserve dwelling units for low-income residents, whichever is shorter. If the financing program involves less than the entire home, only those dwelling units included in the financing program are eligible for total exemption. The department of revenue shall provide by rule the requirements for monitoring compliance with the provisions of this subsection and the requirements for exemption including:

(a) The number or percentage of dwelling units required to be occupied by low-income residents, and a definition of low-income;

(b) The type and character of the dwelling units, whether independent units or otherwise; and

(c) Any particular requirements for continuing care retirement communities.

(3) A home for the aging is eligible for a partial exemption on the real property and a total exemption for the home's personal property if the home does not meet the requirements of subsection (1) of this section because fewer than fifty percent of the occupied dwelling units are occupied by eligible residents(-),<sub>2</sub> as follows:

(a) A partial exemption shall be allowed for each dwelling unit in a home occupied by a resident requiring assistance with activities of daily living.

(b) A partial exemption shall be allowed for each dwelling unit in a home occupied by an eligible resident.

(c) A partial exemption shall be allowed for an area jointly used by a home for the aging and by a nonprofit organization, association, or corporation currently exempt from property taxation under one of the other provisions of this chapter. The shared area must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property taxation under one of the other provisions of this chapter, such as kitchen, dining, and laundry areas.

(d) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, less the assessed value of any area exempt under (c) of this subsection, by a fraction. The numerator of the fraction is the number of dwelling units occupied by eligible ~~((persons multiplied by two))~~ residents and by residents requiring assistance with activities of daily living. The denominator of the fraction is the total number of occupied dwelling units as of January 1st of the year for which exemption is claimed. ~~((The fraction shall never exceed one.~~

~~(3))~~ (4) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

~~((4))~~ (5) A home for the aging is exempt from taxation only if the organization operating the home is exempt from income tax under section 501(c) of the federal internal revenue code as existing on January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purposes of this section.

~~((5))~~ (6) In order for the home to be eligible for exemption under subsections (1)(a) and (2)(b) of this section, each eligible resident of a home for the aging shall submit ~~(the form required under RCW 84.36.385)~~ an income verification form to the county assessor by July 1st of the assessment year in which the application for exemption is made. The income verification form shall be prescribed and furnished by the department of revenue. An eligible resident who has filed a form for a previous year need not file a new form until there is a change in status affecting the person's eligibility.

~~((6))~~ (7) In determining the true and fair value of a home for the aging for purposes of the partial exemption provided by subsection ~~((2))~~ (3) of this section, the assessor shall apply the computation method provided by RCW 84.34.060 and shall consider only the use to which such property is applied during the years for which such partial exemptions are available and shall not consider potential uses of such property.

~~((7))~~ (8) A home for the aging that was exempt or partially exempt for taxes levied in 1993 for collection in ~~(1990 and)~~ 1994 is partially exempt for taxes levied in 1994 for collection in 1995, has an increase in taxable value for taxes levied in 1994 for collection in 1995 due to the change prescribed by chapter . . . , Laws of 1993 (this act) with respect to the numerator of the fraction used to determine the amount of a partial exemption, and is not fully exempt under this section is entitled to partial exemptions as follows:

(a) For taxes levied in 1994 for collection in ~~(1991 and 1992, two-thirds of the assessed value that would otherwise be subject to tax under this section is exempt from taxation)~~ 1995, the home shall pay taxes based upon the taxable value in 1993 plus one-third of the increase in the taxable value from 1993 to the nonexempt value calculated under subsection (3)(d) of this section for 1994.

(b) For taxes levied in 1995 for collection in ~~(1993)~~ 1996, ~~(one-third of the assessed value that would otherwise be subject to tax under this section is exempt from taxation)~~ the home shall pay taxes based upon the taxable value for 1994 as calculated in (a) of this subsection plus one-half of the increase in the taxable value from 1994 to the nonexempt value calculated under subsection (3)(d) of this section for 1995. For taxes levied in 1996 for collection in 1997 and for taxes levied thereafter, this subsection (8) does not apply, and the home shall pay taxes without reference to this subsection (8).

(c) For purposes of this subsection (8), "taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of taxes due.

~~((8))~~ (9) As used in this section:

(a) "Eligible resident" means a person who ~~(would be eligible for an exemption of property taxes under RCW 84.36.381 (1) through (4) if the person owned a single family dwelling and)~~:

(i) Occupied the dwelling unit as a principal place of residence as of January 1st of the year for which the exemption is claimed. Confinement of the person to a hospital or nursing home does not disqualify the claim of exemption if the



dwelling unit is temporarily unoccupied or if the dwelling unit is occupied by a spouse, a person financially dependent on the claimant for support, or both; and

(ii) Is sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. Any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income (~~as defined in RCW 84.36.383~~) of no more than the greater of twenty-two thousand dollars (~~or less~~) or eighty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the person resides. For the purposes of determining eligibility under this section, a "cotenant" (~~as used in RCW 84.36.383~~) means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home. If the person submitting the income verification form was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person submitting the income verification form is reduced for two or more months of the preceding year by reason of the death of the person's spouse, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after the death of the spouse by twelve.

(c) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal social security act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(d) "Resident requiring assistance with activities of daily living" means a person who requires significant assistance with the activities of daily living and who would be at risk of nursing home placement without this assistance.

(e) "Home for the aging" means a residential housing facility that (i) provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person; (ii) has only residents who are at least ~~((sixty-two))~~ sixty-one years of age or who have needs for care generally compatible with persons who are at least ~~((sixty-two))~~ sixty-one years of age; and (iii) provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

~~((9))~~ (10) A for-profit home for the aging that converts to nonprofit status after June 11, 1992, and would otherwise be eligible for tax exemption under this section may not receive the tax exemption until five years have elapsed since the conversion. The exemption shall then be ratably granted over the next five years.

NEW SECTION. Sec. 2. This act shall be effective for taxes levied in 1994 for collection in 1995 and for taxes levied thereafter.

Passed the House March 13, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 152**

[Substitute House Bill 1028]

**LIVE-IN CARE FOR MOBILE HOME PARK TENANTS**

**Effective Date: 7/25/93**

AN ACT Relating to live-in care for tenants in mobile home parks; and adding a new section to chapter 59.20 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 59.20 RCW to read as follows:

A tenant in a mobile home park may share his or her mobile home with any person over eighteen years of age, if that person is providing live-in home health care or live-in hospice care to the tenant under an approved plan of treatment

ordered by the tenant's physician. The live-in care provider is not considered a tenant of the park and shall have no rights of tenancy in the park. Any agreement between the tenant and the live-in care provider does not change the terms and conditions of the rental agreement between the landlord and the tenant. The live-in care provider shall comply with the rules of the mobile home park, the rental agreement, and this chapter. The landlord may not charge a guest fee for the live-in care provider.

Passed the House March 8, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 153

[House Bill 1111]

### PEDESTRIAN CROSSWALKS—REQUIREMENTS FOR VEHICLE OPERATORS

Effective Date: 7/25/93

AN ACT Relating to pedestrian crosswalks; amending RCW 46.61.235, 46.61.055, and 46.61.060; and creating a new section.

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

**Sec. 1.** RCW 46.61.235 and 1990 c 241 s 4 are each amended to read as follows:

(1) ~~((When traffic control signals are not in place or not in operation,))~~ The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within an unmarked or marked crosswalk when the pedestrian is upon or within one lane of the half of the roadway upon which the vehicle is traveling ((, or when the pedestrian is upon the opposite half of the roadway and moving toward the approaching vehicle)) or onto which it is turning. For purposes of this section "half of the roadway" means all traffic lanes carrying traffic in one direction of travel, and includes the entire width of a one-way roadway.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk, run, or otherwise move into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Subsection (1) of this section does not apply under the conditions stated in RCW 46.61.240(2).

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

**Sec. 2.** RCW 46.61.055 and 1990 c 241 s 2 are each amended to read as follows:

Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word or legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

(a) Vehicle operators facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. ~~((But))~~ Vehicle operators turning right or left shall stop to allow other vehicles ((or pedestrians)) lawfully within the intersection control area to complete their movements. Vehicle operators turning right or left shall also stop for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(b) Vehicle operators facing a green arrow signal, shown alone or in combination with another indication, may enter the intersection control area only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. ~~((The))~~ Vehicle operators shall stop to allow other vehicles ((or pedestrians)) lawfully within the intersection control area to complete their movements. Vehicle operators shall also stop for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(c) Unless otherwise directed by a pedestrian control signal, as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication

(a) Vehicle operators facing a steady circular yellow or yellow arrow signal are thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. Vehicle operators shall stop for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(b) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 shall not enter the roadway~~((, but if pedestrians have begun to cross before the display of either signal, vehicle operators shall stop to allow them to complete their movements)).~~

(3) Steady red indication

(a) Vehicle operators facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection control area and shall remain standing until an indication to proceed is shown. However, the vehicle operators facing a steady circular red signal may, after stopping proceed to make a right turn from a one-way or two-way street into a two-way

street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement(~~(+but)~~). Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area(~~(, or approaching pedestrians lawfully within an adjacent crosswalk,)~~) to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(b) Unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing a steady circular red signal alone shall not enter the roadway.

(c) Vehicle operators facing a steady red arrow indication may not enter the intersection control area to make the movement indicated by such arrow, and unless entering the intersection control area to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, before entering a crosswalk on the near side of the intersection control area, or if none, then before entering the intersection control area and shall remain standing until an indication to make the movement indicated by such arrow is shown. However, the vehicle operators facing a steady red arrow indication may, after stopping proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement(~~(+but)~~). Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area(~~(, or approaching pedestrians lawfully within an adjacent crosswalk,)~~) to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(d) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady red arrow signal indication shall not enter the roadway.

(4) If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

**Sec. 3.** RCW 46.61.060 and 1990 c 241 s 3 are each amended to read as follows:

Whenever pedestrian control signals exhibiting the words "Walk" or the walking person symbol or "Don't Walk" or the hand symbol are operating, the signals shall indicate as follows:

(1) WALK or walking person symbol—Pedestrians facing such signal may cross the roadway in the direction of the signal. (~~(Pedestrians that begin to cross a roadway while facing such signal shall be granted the right to complete their crossing by all vehicle operators.)~~) Vehicle operators shall stop for pedestrians who are lawfully moving within the intersection control area on such signal as required by RCW 46.61.235(1).

(2) Steady or flashing DON'T WALK or hand symbol—Pedestrians facing such signal shall not enter the roadway(~~(, but if pedestrians have begun to cross before the display of either signal, vehicle operators shall stop to allow them to complete their movements)~~). Vehicle operators shall stop for pedestrians who have begun to cross the roadway before the display of either signal as required by RCW 46.61.235(1).

(3) Pedestrian control signals having the "Wait" legend in use on August 6, 1965, shall be deemed authorized signals and shall indicate the same as the "Don't Walk" legend. Whenever such pedestrian control signals are replaced the legend "Wait" shall be replaced by the legend "Don't Walk" or the hand symbol.

NEW SECTION. Sec. 4. The Washington traffic safety commission and its member agencies shall, in cooperation with other interested organizations, including the media, develop and execute with existing resources a state-wide pedestrian safety education program. The Washington traffic safety commission shall evaluate the effectiveness of Washington's pedestrian safety program and report its findings to the legislative transportation committee by January 1, 1995.

Passed the House March 8, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 154

[Substitute House Bill 1057]

### MOBILE AND MANUFACTURED HOMES—DOUBLE AMENDMENT CORRECTION

Effective Date: 7/25/93

AN ACT Relating to correction of double amendments relating to regulation of mobile and manufactured homes; reenacting and amending RCW 46.12.290; and reenacting RCW 46.04.302.

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

**Sec. 1.** RCW 46.04.302 and 1989 c 343 s 24 and 1989 c 337 s 1 are each reenacted to read as follows:

"Mobile home" or "manufactured home" means a structure, designed and constructed to be transportable in one or more sections, and is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must

comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. Manufactured home does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

**Sec. 2.** RCW 46.12.290 and 1989 c 337 s 4 and 1989 c 343 s 20 are each reenacted and amended to read as follows:

(1) The provisions of chapter 46.12 RCW insofar as they are not inconsistent with the provisions of chapter 231, Laws of 1971 ex. sess. or chapter 65.20 RCW apply to mobile or manufactured homes (~~regulated by chapter 231, Laws of 1971 ex. sess.~~): PROVIDED, That RCW 46.12.080 and 46.12.250 through 46.12.270 shall not apply to mobile or manufactured homes.

(2) In order to (~~lawfully~~) transfer ownership (~~or add a secured party to~~) of a mobile home, all registered owners of record must sign the title certificate releasing their ownership.

(3) The director of licensing shall have the power to adopt such rules as necessary to implement the provisions of this chapter relating to mobile homes.

Passed the House February 22, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 155

[House Bill 1263]

### STATE PATROL PROMOTIONAL EXAMINATIONS

Effective Date: 7/25/93

AN ACT Relating to Washington state patrol examinations for promotion; and amending RCW 43.43.330.

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

**Sec. 1.** RCW 43.43.330 and 1985 c 4 s 1 are each amended to read as follows:

Appropriate examinations shall be conducted for the promotion of commissioned patrol officers to the rank of sergeant and lieutenant. The examinations shall be prepared and conducted under the supervision of the chief of the Washington state patrol, who shall cause at least thirty days written notice thereof to be given to all patrol officers eligible for such examinations. The written notice shall specify the expected type of examination and relative weights to be assigned if a combination of tests is to be used. Examinations shall be given once every two years, or whenever the eligible list becomes exhausted as the case may be. After the giving of each such examination a new eligible list shall be compiled replacing any existing eligible list for such rank. Only grades

attained in the last examination given for a particular rank shall be used in compiling each eligible list therefor. The chief, or in his discretion a committee of three individuals appointed by him, shall prepare and conduct the examinations, and thereafter grade and evaluate them in accordance with the following provisions, or factors: For promotion to the rank of sergeant or lieutenant~~((; (1) Service rating forty percent; (2) written examination thirty percent; (3) oral examination and interview twenty percent; (4) personnel record ten percent. For promotion to the rank of sergeant; (1) Service rating fifty percent; (2) written examination fifty percent))~~, the examination shall consist of one or more of the following components: (1) Oral examination; (2) written examination; (3) service rating; (4) personnel record; (5) assessment center or other valid tests that measures the skills, knowledge, and qualities needed to perform these jobs. A cutoff score may be set for each testing component that allows only those scoring above the cutoff on one component to proceed to take a subsequent component.

Passed the House February 22, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 156

[House Bill 1317]

### STATE PARK VOLUNTEER ORGANIZATIONS—USE OF PARK FACILITIES FOR FUND-RAISING ACTIVITIES

Effective Date: 7/25/93

AN ACT Relating to the state parks' volunteer organizations; and amending RCW 43.51.060.

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

**Sec. 1.** RCW 43.51.060 and 1987 c 225 s 3 are each amended to read as follows:

The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money ~~((solely for))~~ to contribute gifts ~~((and))~~, grants, and support to the commission for the purposes of this chapter ~~((with the support of available agency personnel and services))~~. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in ~~((its status as a public user of park facilities))~~ furtherance of its purposes to benefit the commission as provided in this chapter.



The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;

(3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;

(4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;

(5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;

(6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper. All fees received by the commission shall be deposited with the state treasurer in the state general fund;

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed ten years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040, and upon his recommendation, a supervisor of recreation, and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose.

Passed the House February 24, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 157**

[House Bill 1407]

**LEGISLATIVE AUDITOR'S DUTIES AND ATTORNEY GENERAL'S  
DUTIES—REVISIONS**

**Effective Date: 7/25/93**

AN ACT Relating to duties of the legislative auditor and the attorney general; and amending RCW 43.88.310.

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

**Sec. 1.** RCW 43.88.310 and 1977 ex.s. c 320 s 4 are each amended to read as follows:

(1) The legislative auditor, with the concurrence of the legislative budget committee, may file with the attorney general any audit exceptions or other findings of any performance audit, management study, or special report prepared for the legislative budget committee, any standing or special committees of the house or senate, or the entire legislature which indicate a violation of RCW 43.88.290, or any other act of malfeasance, misfeasance, or nonfeasance on the part of any state officer or employee.

(2) The attorney general shall promptly review each filing received from the legislative auditor and ~~((proceed to))~~ may act thereon as provided in RCW 43.88.300, or any other applicable statute authorizing enforcement proceedings by the attorney general. ~~((If for any reason the attorney general is unable to proceed))~~ The attorney general shall ((report this fact and the reasons therefor to)) advise the legislative budget committee of the status of exceptions or findings referred under this section.

Passed the House March 10, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 158**

[House Bill 1351]

**WORKERS' COMPENSATION—HOSPITAL DEFINED FOR SELF-INSURERS**

**Effective Date: 7/25/93**

AN ACT Relating to the definition of hospital in regard to self-insurers; and amending RCW 51.14.150.

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

**Sec. 1.** RCW 51.14.150 and 1983 c 174 s 2 are each amended to read as follows:

(1) For the purposes of this section, "hospital" means a hospital as defined in RCW 70.41.020(2) or a psychiatric hospital regulated under chapter 71.12 RCW, but does not include beds utilized by a comprehensive cancer center for cancer research.

(2)(a) Any two or more employers which are school districts or educational service districts, ~~((2))~~ or (b) any two or more employers which are hospitals (~~as defined in RCW 70.39.020(3))~~, and are owned or operated by a state agency or municipal corporation of this state, or ~~((3))~~ (c) any two or more employers which are hospitals (~~as defined in RCW 70.39.020(3))~~, no one of which is owned or operated by a state agency or municipal corporation of this state (~~or subject to RCW 70.39.150(3))~~, may enter into agreements to form self-insurance groups for the purposes of this chapter (~~— PROVIDED, That~~).

(3) No more than one group may be formed under subsection (2)(b) of this section and no more than one group may be formed under subsection ~~((3))~~ (2)(c) of this section.

(4) The self-insurance groups shall be organized and operated under rules promulgated by the director under RCW 51.14.160. Such a self-insurance group shall be deemed an employer for the purposes of this chapter, and may qualify as a self-insurer if it meets all the other requirements of this chapter.

Passed the House March 8, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 159

[Substitute House Bill 1352]

### WORKERS' COMPENSATION—MEDICAL AID FEE SCHEDULES

Effective Date: 7/25/93

AN ACT Relating to fee schedules for industrial insurance medical aid; and amending RCW 51.04.030, 51.36.080, and 51.36.085.

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

**Sec. 1.** RCW 51.04.030 and 1989 c 189 s 1 are each amended to read as follows:

The director shall, through the division of industrial insurance, supervise the providing of prompt and efficient care and treatment, including care provided by physician ~~((s<sup>2</sup>))~~ assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and promulgate and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That, the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED

FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

The director shall ~~((make))~~, in consultation with interested persons, establish and, ~~((from time to time,))~~ in his or her discretion, periodically change as may be necessary, and ~~((promulgate))~~ make available a fee ~~((bill))~~ schedule of the maximum charges to be made by any physician, surgeon, hospital, druggist, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title shall be charged or paid at a rate or rates exceeding those specified in such fee ~~((bill))~~ schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(15).

The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the promulgated rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules ~~((and))~~, regulations, or the established fee schedules and rules and regulations promulgated under it.

**Sec. 2.** RCW 51.36.080 and 1987 c 470 s 1 are each amended to read as follows:

(1) All fees and medical charges under this title shall conform to ~~((regulations promulgated))~~ the fee schedule established by the director and shall be paid within sixty days of receipt by the department of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the department prior to final adjudication of claim allowance. The department shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Beginning in fiscal year 1987, interest payments under this subsection may be paid only from funds appropriated to the department for administrative purposes. A record of payments made under this subsection shall be submitted twice yearly to the commerce and labor committees of the senate and the house of representatives and to the ways and means committees of the senate and the house of representatives.

Nothing in this section may be construed to require the payment of interest on any billing, fee, or charge if the industrial insurance claim on which the billing, fee, or charge is predicated is ultimately rejected or the billing, fee, or charge is otherwise not allowable.

In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

(2) The director may establish procedures for selectively or randomly auditing the accuracy of fees and medical billings submitted to the department under this title.

**Sec. 3.** RCW 51.36.085 and 1987 c 316 s 4 are each amended to read as follows:

All fees and medical charges under this title shall conform to regulations promulgated, and the fee schedule established by the director and shall be paid within sixty days of receipt by the self-insured of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the self-insured prior to final adjudication of claim allowance. The self-insured shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Passed the House March 9, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 160

[Substitute House Bill 1063]

### WINE COMMISSION—FUNDING AND PROMOTIONAL ACTIVITIES

**Effective Date:** 7/1/93

AN ACT Relating to the Washington wine commission; amending RCW 66.12.180 and 66.24.210; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 66.12.180 and 1987 c 452 s 14 are each amended to read as follows:

The Washington wine commission created under RCW 15.88.030 may purchase or receive donations of (~~Washington~~) wine from wineries and may use such wine for promotional purposes. Wine furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. No license, permit, or bond is required of the Washington wine commission under this title for promotional activities conducted under chapter 15.88 RCW.

**Sec. 2.** RCW 66.24.210 and 1991 c 192 s 3 are each amended to read as follows:

(1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, (~~1993~~) 2001. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) Until July 1, 1995, an additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(34) when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under RCW 69.50.520 by the twenty-fifth day of the following month.

**NEW SECTION.** Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House March 9, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 161

[House Bill 1076]

### DECEDENTS' ESTATES—DISTRIBUTION OF INCOME EARNED DURING ADMINISTRATION

**Effective Date:** 7/25/93

AN ACT Relating to the distribution of income earned during administration of a decedent's estate; and amending RCW 11.104.050.

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

**Sec. 1.** RCW 11.104.050 and 1985 c 30 s 88 are each amended to read as follows:

(1) Unless the will or the court otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest due at death, and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate, except that the principal shall be reimbursed from income for any increase in estate taxes due to the use of administration expenses that were paid from principal as deductions for income tax purposes.

(2) Unless the will or the court otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trust under this chapter and distributed as follows:

(a) To beneficiaries of any specific bequest, legacy, or devise, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the

property, and appropriate portions of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration;

(b) Subject to (c) of this subsection, to all other beneficiaries, including trusts, the balance of the income less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, plus the balance of all income accrued since the death of the testator, and less the balance of all taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of the fair value, provided, that the amount of income earned before the date or dates of payment of any estate or inheritance tax shall be distributed to those beneficiaries in proportion to their interests immediately before the making of those payments. A personal representative who has been granted nonintervention powers under chapter 11.68 RCW may determine the time and manner of distributing the income to a beneficiary entitled to receive the income including:

(i) A residuary beneficiary; and

(ii) A testamentary trust beneficiary to whom trust income must be distributed or, if the trustee named in the will approves or ratifies the distribution, to whom trust income may be distributed; and

(c) Pecuniary bequests not in trust do not receive income, and, subject to the provisions of RCW 11.56.160, all such bequests, including those to the decedent's surviving spouse, are not allocated any share of the expenses identified in subsection (2)(b) of this section.

(3) Any income with respect to which the income taxes have been paid which is payable in whole or in part to one or more charitable or other tax exempt organizations, and for which an income tax charitable deduction was allowable, shall be allocated among the distributees in such manner that the diminution in such taxes resulting from the charitable deduction allowable will inure to the benefit of the charitable or tax exempt organization giving rise to the deduction.

(4) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust.

Passed the House March 8, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.



## CHAPTER 162

[Substitute House Bill 1144]

## MARINE SAFETY FIELD OPERATIONS

Effective Date: 7/1/93

AN ACT Relating to marine safety field operations; amending RCW 90.56.510; adding a new section to chapter 88.46 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 88.46 RCW to read as follows:

(1) The office shall establish a field operations program to enforce the provisions of this chapter. The field operations program shall include, but is not limited to, the following elements:

- (a) Education and public outreach;
- (b) Review of lightering and bunkering operations to prevent oil spills;
- (c) Evaluation and boarding of tank vessels for compliance with prevention plans prepared pursuant to this chapter;
- (d) Evaluation and boarding of covered vessels that may pose a substantial risk to the public health, safety, and the environment;
- (e) Evaluation and boarding of covered vessels for compliance with rules adopted by the office to implement recommendations of regional marine safety committees; and
- (f) Collection of vessel information to assist in identifying vessels which pose a substantial risk to the public health, safety, and the environment.

(2) The office shall coordinate the field operations program with similar activities of the United States coast guard. To the extent feasible, the office shall coordinate its boarding schedules with those of the United States coast guard to reduce the impact of boardings on vessel operators, to more efficiently use state and federal resources, and to avoid duplication of United States coast guard inspection operations.

(3) In developing and implementing the field operations program, the office shall give priority to activities designed to identify those vessels which pose the greatest risk to the waters of the state. The office shall consult with the marine transportation industry, individuals concerned with the marine environment, other state and federal agencies, and the public in developing and implementing the program required by this section.

**Sec. 2.** RCW 90.56.510 and 1992 c 73 s 41 are each amended to read as follows:

(1) The oil spill administration account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts deposited in the account from the tax imposed by RCW 82.23B.020(2) for the previous fiscal biennium exceed the amount

appropriated from the account for the previous fiscal biennium, the state treasurer shall transfer the amount of receipts exceeding the appropriation to the oil spill response account. If, on the first day of any calendar month, the balance of the oil spill response account is greater than twenty-five million dollars and the balance of the oil spill administration account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the period 1991-93 the state treasurer may transfer funds from the oil spill response account to the oil spill administration account in amounts necessary to support appropriations made from the oil spill administration account in the omnibus appropriations act.

(2) Expenditures from the oil spill administration account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Starting with the 1995-1997 biennium, the legislature shall give activities of state agencies related to prevention of oil spills priority in funding from the oil spill administration account. Costs of administration include the costs of:

- ~~((1))~~ (a) Routine responses not covered under RCW 90.56.500;
- ~~((2))~~ (b) Management and staff development activities;
- ~~((3))~~ (c) Development of rules and policies and the state-wide plan provided for in RCW 90.56.060;
- ~~((4))~~ (d) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;
- ~~((5))~~ (e) Interagency coordination and public outreach and education;
- ~~((6))~~ (f) Collection and administration of the tax provided for in chapter 82.23B RCW; and
- ~~((7))~~ (g) Appropriate travel, goods and services, contracts, and equipment.

NEW SECTION. **Sec. 3.** The legislature recognizes that by directing the establishment of a field operations program, there may not be sufficient funds in future biennia to continue funding all activities currently paid for out of the oil spill administration account. In order to assure that sufficient funds will be available for spill prevention and response activities in future biennia, the marine oversight board shall: Study the expenditures from the oil spill administration account and recommend to the governor and the appropriate standing committees priority activities for funding with an emphasis on prevention of oil spills; and study the need for additional sources of funding for the account. The marine oversight board shall report its findings not later than November 1, 1993.

**NEW SECTION. Sec. 4.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House March 13, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 163

[House Bill 1212]

### YOUTH SHOWS AND FAIRS—APPROVAL AUTHORITY OF SUPERINTENDENT OF PUBLIC INSTRUCTION

**Effective Date:** 7/25/93

AN ACT Relating to youth shows and fairs; and amending RCW 15.76.120.

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

**Sec. 1.** RCW 15.76.120 and 1991 c 238 s 74 are each amended to read as follows:

For the purposes of this chapter all agricultural fairs in the state which may become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but one county fair in a single county: **PROVIDED, HOWEVER,** That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University (~~and/or the Washington work force training and education coordinating board~~) or the office of the superintendent of public

instruction, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living.

Passed the House March 3, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 164

[Substitute House Bill 1389]

### OFFENDER WORK CREWS—PERFORMANCE OF CIVIC IMPROVEMENT TASKS

Effective Date: 7/25/93

AN ACT Relating to work crews for offenders; and reenacting and amending RCW 9.94A.030.

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

**Sec. 1.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period

of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit (~~(to be)~~) of any controlled substance or counterfeit

substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. ~~((The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property.))~~ The civic improve-



ment tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

(35) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(36) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns

or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Passed the House March 13, 1993.  
Passed the Senate April 8, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 165**

[House Bill 1150]

**REGULATION OF COUNSELORS—REPEAL OF SUNSET PROVISIONS**

**Effective Date: 7/25/93**

AN ACT Relating to repealing the sunset provisions for the regulation of counselors; and repealing RCW 18.19.910 and 18.19.911.

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

NEW SECTION. **Sec. 1.** The following acts or parts of acts are each repealed:

- (1) RCW 18.19.910 and 1990 c 297 s 13 & 1987 c 512 s 25; and
- (2) RCW 18.19.911 and 1990 c 297 s 14 & 1987 c 512 s 26.

Passed the House February 24, 1993.  
Passed the Senate April 13, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 166**

[House Bill 1227]

**MEAT INSPECTION ACT—APPLICATION OF ADULTERATION AND MISBRANDING PROVISIONS TO EXEMPT RETAIL MEAT DEALERS**

**Effective Date: 7/25/93**

AN ACT Relating to misbranding and adulteration; and amending RCW 16.49A.600 and 16.74.570.

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

**Sec. 1.** RCW 16.49A.600 and 1971 ex.s. c 108 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the provisions of this chapter (~~including licensing and those requiring inspection of the slaughter of meat food animals and the preparation of carcasses or parts thereof, meat or~~

~~meat food products~~) shall not apply to operations of the types traditionally and usually conducted by a retail meat dealer at retail stores and restaurants, when conducted at any retail store or restaurant or similar type establishment for sale in normal retail quantities or service of such articles to ultimate consumers at such establishment. Normal retail quantities or service of such articles to consumers shall be as defined in ~~((regulations))~~ rules adopted under the provisions of this chapter.

(2) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to operations that are exempted under this section.

**Sec. 2.** RCW 16.74.570 and 1969 ex.s. c 146 s 65 are each amended to read as follows:

(1) The director shall, by ~~((regulation))~~ rule and under such conditions as to sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this chapter—

(a) ~~((retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up and/or packaging of poultry products on the premises where such sales to consumers are made;~~

~~(b))~~ for such period of time as the director determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this chapter, any person engaged in the processing of poultry or poultry products for intrastate commerce and the poultry or poultry products processed by such person: PROVIDED, That no such exemption shall continue in effect on and after February 18, 1970; and

~~((e))~~ (b) persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines necessary to avoid conflict with such requirements while still effectuating the purposes of this chapter.

(2)(a) The director shall, by ~~((regulation))~~ rule and under such conditions, including sanitary standards, practices, and procedures, as he or she may prescribe, exempt from specific provisions of this chapter—

(i) the slaughtering by any person of poultry of his or her own raising, and the processing by him or her and transportation of the poultry products exclusively for use by him or her and members of his or her household and his or her nonpaying guests and employees; and

(ii) the custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him or her and members of his or her household and his or her nonpaying guests and employees: PROVIDED, That the director may ~~((promulgate))~~ adopt such rules ~~((and regulations))~~ as are necessary to prevent the commingling of inspected and uninspected poultry and poultry products.

(b) In addition to the specific exemptions provided herein, the director shall, when he or she determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by ~~((regulation))~~ rule, consistent with ~~((paragraph))~~ (c) of this subsection, for the exemption of the operations of poultry producers not exempted under ~~((paragraph))~~ (a) of this subsection, which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, from such provisions of this chapter as he or she deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as he or she shall prescribe to effectuate the purposes of this chapter.

(c) The provisions of this chapter shall not apply to poultry producers with respect to poultry of their own raising on their own farms if—

(i) such producers slaughter not more than two hundred fifty turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey);

(ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms.

(3) The director shall, by rule and under such conditions as to sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this chapter retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up or packaging, or both, of poultry products on the premises where such sales to consumers are made.

(4) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles and operations which are exempted ~~((from inspection))~~ under this section, except as otherwise specified under subsections (1) and (2) of this section.

~~((4))~~ (5) The director may by order suspend or terminate any exemption under this section with respect to any person whenever he or she finds that such action will aid in effectuating the purposes of this chapter.

Passed the House February 17, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 167**

[House Bill 1292]

**UNEMPLOYMENT COMPENSATION—MASSAGE PRACTITIONERS—EMPLOYMENT  
DEFINED****Effective Date: 7/1/93**

AN ACT Relating to defining "employment" for unemployment compensation; adding a new section to chapter 50.04 RCW; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 50.04 RCW to read as follows:

The term "employment" does not include services performed by a massage practitioner licensed under chapter 18.108 RCW in a massage business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed.

**NEW SECTION.** **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1993.

Passed the House March 8, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 168**

[Engrossed House Bill 1353]

**WORKERS' COMPENSATION—ASBESTOS DISEASE BENEFIT CLAIMS****Effective Date: 7/1/93**

AN ACT Relating to asbestos disease benefits; amending RCW 51.12.102; creating a new section; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 51.12.102 and 1988 c 271 s 1 are each amended to read as follows:

(1) The department shall furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if (a) there are objective clinical findings to substantiate that the worker has an asbestos-related claim for occupational disease and (b) the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered under this title. The department shall render a decision as to the liable insurer and shall continue

to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

(2) The benefits authorized under subsection (1) of this section shall be paid from the medical aid fund, with the self-insurers and the state fund each paying a pro rata share, based on number of worker hours, of the costs necessary to fund the payments. For the purposes of this subsection only, the employees of self-insured employers shall pay an amount equal to one-half of the share charged to the self-insured employer.

(3) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a self-insurer or the state fund, then the self-insurer or state fund shall reimburse the medical aid fund for all benefits paid and costs incurred by the fund.

(4) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program other than the federal social security, old age survivors, and disability insurance act, 42 U.S.C. or an insurer under the maritime laws of the United States:

(a) The department shall pursue the federal program insurer on behalf of the worker or beneficiary to recover from the federal program insurer the benefits due the worker or beneficiary and on its own behalf to recover the benefits previously paid to the worker or beneficiary and costs incurred;

(b) For the purpose of pursuing recovery under this subsection, the department shall be subrogated to all of the rights of the worker or beneficiary receiving compensation under subsection (1) of this section; and

(c) The department shall not pursue the worker or beneficiary for the recovery of benefits paid under subsection (1) of this section unless the worker or beneficiary receives recovery from the federal program insurer, in addition to receiving benefits authorized under this section. The director may exercise his or her discretion to waive, in whole or in part, the recovery of any such benefits where the recovery would be against equity and good conscience.

(d) Actions pursued against federal program insurers determined by the department to be liable for benefits under this section may be prosecuted by special assistant attorneys general. The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate actions under this subsection. Attorneys' fees and costs shall be paid in conformity with applicable federal and state law. Any legal costs remaining as an obligation of the department shall be paid from the medical aid fund.

(5) The provisions of subsection (1) of this section shall not apply if the worker or beneficiary refuses, for whatever reason, to assist the department in making a proper determination of coverage. If a worker or beneficiary refuses

to cooperate with the department, self-insurer, or federal program insurer by failing to provide information that, in the opinion of the department, is relevant in determining the liable insurer, or if a worker refuses to submit to medical examination, or obstructs or fails to cooperate with the examination, or if the worker or beneficiary fails to cooperate with the department in pursuing benefits from the federal program insurer, the department shall reject the application for benefits. No information obtained under this section is subject to release by subpoena or other legal process.

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit.

~~((7) This section shall expire July 1, 1993.)~~

NEW SECTION. Sec. 2. This act applies to all claims without regard to the date of injury or date of filing of the claim.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House March 13, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 169

[Substitute House Bill 1926]

STATE PUBLICATIONS—SALE AND DISTRIBUTION OF—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to the sale and distribution of state publications; and amending RCW 40.04.090.

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

**Sec. 1.** RCW 40.04.090 and 1982 1st ex.s. c 32 s 2 are each amended to read as follows:

The house and senate journals shall be distributed and/or sold by the state law librarian as follows:

(1) Subject to subsection (5) of this section, sets shall be distributed as follows: One set to each secretary and assistant secretary of the senate, chief clerk and assistant to the chief clerk of the house of representatives, and to each

minute clerk and sergeant-at-arms of the two branches of the legislature of which they occupy the offices and positions mentioned. One to each requesting official whose office is created by the Constitution, and one to each requesting state department director; two copies to the state library; three copies to the University of Washington law library; two copies to the University of Washington library; one to the King county law library; one to the Washington State University library; one to the library of each of the regional universities and to The Evergreen State College; one to the law library of Gonzaga University law school; one to the law library of the University of Puget Sound law school; one to the law libraries of any accredited law school as hereafter established in this state; and one to each free public library in the state which requests it.

(2) House and senate journals of the preceding regular session during an odd- or even-numbered year, and of any intervening special session, shall be provided for use of legislators in such numbers as directed by the chief clerk of the house of representatives and secretary of the senate(~~(and sufficient sets shall be retained for the use of the state law library)~~).

(3) Sufficient sets shall be retained for the use of the state law library. Surplus sets of the house and senate journals shall be sold and delivered by the state law librarian(~~(in which case the price shall be thirty five dollars plus postage for those of the regular sessions during an odd- or even-numbered year, and)~~) at a price (~~(determined by the state printer to cover the costs of paper, printing, binding and postage for those of the special sessions, when separately bound)~~) set by the chief clerk of the house of representatives and the secretary of the senate after consulting with the state printer to determine reasonable costs associated with the production of the journals, and the proceeds therefrom shall be paid to the state treasurer for the general fund.

(4) The state law librarian is authorized to exchange copies of the house and senate journals for similar journals of other states, territories, and/or governments, or for other legal materials, and to make such other and further distribution of them as in his or her judgment seems proper.

(5) Periodically the state law librarian may canvas those entitled to receive copies under this section, and may reduce or eliminate the number of copies distributed to anyone who so concurs.

Passed the House March 12, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.



## CHAPTER 170

[Engrossed House Bill 1845]

## HORSE RACING PURSES ENHANCEMENT

Effective Date: 4/30/93

AN ACT Relating to horse racing purses; amending RCW 67.16.105; creating a new section; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation.

Sec. 2. RCW 67.16.105 and 1991 c 270 s 6 are each amended to read as follows:

(1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars, the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, all licensees shall forward one-tenth of one percent of the daily gross receipts of all parimutuel machines to the commission daily for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensees. The total of such payments shall not exceed one hundred fifty thousand dollars in any one year and any amount in excess of one hundred fifty thousand dollars shall be remitted to the general fund. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race

tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(4) In addition to those sums paid to the commission in subsection (2) of this section, licensees who are nonprofit corporations and have race meets of thirty days or more shall withhold and pay to the commission daily for each authorized day of racing an amount equal to ~~((two))~~ one and ~~((one-half))~~ one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet. Said percentage shall come from that amount the licensee is authorized to retain under RCW 67.16.170(2). The commission shall deposit these moneys in the Washington thoroughbred racing fund created in RCW 67.16.250.

(5) The additional one and one-quarter percent of the moneys allowed to be retained by this section must be used for increased purses. The commission shall adopt such rules as may be necessary to enforce this subsection.

(6) Effective January 1, 1994, the amount of daily gross receipts withheld and paid to the commission, as set out in subsection (4) of this section, shall revert to two and one-half percent of the daily gross receipts of all parimutuel machines at each race meet.

**NEW SECTION.** Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 171

[House Bill 1535]

### JUVENILE DIVERSION SERVICES FEES

**Effective Date:** 7/25/93

AN ACT Relating to fees for juvenile diversion services; and adding a new section to chapter 13.40 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 13.40 RCW to read as follows:

The county legislative authority may authorize juvenile court administrators to establish fees to cover the costs of the administration and operation of diversion services provided under this chapter. The parent or legal guardian of a juvenile who receives diversion services must pay for the services based on the parent's or guardian's ability to pay. The juvenile court administrators shall develop a fair and equitable payment schedule. No juvenile who is eligible for

diversion as provided in this chapter may be denied diversion services based on an inability to pay for the services.

Passed the House March 9, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 172

[Substitute Senate Bill 5612]

### TRANSPORTATION IMPROVEMENT BOARD MEMBERSHIP—REVISIONS

Effective Date: 7/1/93

AN ACT Relating to the membership of the transportation improvement board; reenacting and amending RCW 47.26.121; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 47.26.121 and 1991 c 363 s 124 and 1991 c 308 s 1 are each reenacted and amended to read as follows:

(1) There is hereby created a transportation improvement board of ~~((seventeen))~~ eighteen members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) One representative appointed by the governor who shall be a state employee with responsibility for transportation policy, planning, or funding; (b) the assistant secretary of the department of transportation whose primary responsibilities relate to planning and public transportation; ~~((b) the assistant secretary for highways of the department of transportation;))~~ (c) the assistant secretary for local programs of the department of transportation; (d) a representative of a public transit system; ~~((and))~~ (e) a private sector representative; and (f) a public member.

(2) Of the county members of the board, one ~~((member))~~ shall be a county engineer ~~((from a county with a population of one hundred twenty-five thousand or more))~~ or public works director; one shall be the executive director of the county road administration board; one ~~((member))~~ shall be a county ~~((engineer from a county with a population of less than one hundred twenty-five thousand; one member shall be the executive director of the county road administration board, created by RCW 36.78.060))~~ planning director or planning manager; ~~((two members))~~ one shall be a county executive~~((s)),~~ ~~((council members))~~ councilmember, or commissioner~~((s))~~ from ~~((counties))~~ a county with a population of one hundred twenty-five thousand or more; one shall be a county executive, councilmember, or commissioner of a county who serves on the board of a public transit system; and one ~~((member))~~ shall be a county executive, ~~((council member))~~ councilmember, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration

board, shall be appointed. Not more than one county member of the board shall be from any one county. ~~((For the purposes of this subsection, the term "county engineer" means the director of public works in any county in which such a position exists.))~~ No more than two of the three county-elected officials may represent counties located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(3) Of the city members of the board ~~((two))~~ one shall be a chief city engineer~~((s))~~, public works director~~((s))~~, or other city employee~~((s))~~ with responsibility for public works activities, of ~~((cities over))~~ a city with a population of twenty thousand ~~((population))~~ or more; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; one shall be a city planning director or planning manager; ~~((two))~~ one shall be a mayor~~((s))~~, commissioner~~((s))~~, or city ~~((council members))~~ councilmember of ~~((cities))~~ a city with a population of ~~((more than))~~ twenty thousand ~~((population))~~ or more; one shall be a mayor, commissioner, or city councilmember of a city who serves on the board of a public transit system; and one shall be a mayor, commissioner, or ~~((council member))~~ councilmember of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city. No more than two of the three city-elected officials may represent cities located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(4) The transit member shall be a general manager, executive director, or transit director of a ~~((city-owned))~~ public transit system~~((-county transportation authority, metropolitan municipal corporation, or public transportation benefit area))~~.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

(6) The public member shall have professional experience in transportation or land use planning, a demonstrated interest in transportation issues, and involvement with community groups or grass roots organizations.

(7) Appointments of county, city, transit, ~~((and))~~ private sector, and public representatives shall be made by the secretary of the department of transportation~~((, with appointments to be made by July 1, 1994))~~. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, and the Washington state transit association for the transit member. The private sector and public members shall be sought through classified advertisements in selected newspapers collectively serving all urban areas of the state, and other appropriate means. Persons applying for the private sector or the public member position must provide a letter of interest and a resume to the secretary of the department of transportation. In the case of a

vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason or when a private sector or public member resigns or is unable or unwilling to serve.

~~((7))~~ (8) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years. The initial term of appointed members may be for less than four years. No appointed member may serve more than two consecutive four-year terms.

~~((8))~~ (9) The board shall elect a chair from among its members for a two-year term.

~~((9))~~ (10) Expenses of the board, including administration of the transportation improvement program, shall be paid from the urban arterial account.

(11) For purposes of this section, "public transit system" means a city-owned transit system, county transportation authority, metropolitan municipal corporation, public transportation benefit area, or regional transit authority.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 18, 1993.

Passed the House April 9, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 173

[Substitute House Bill 1587]

### SINGLE PARENT'S—PRIORITY IN FINANCIAL AID DETERMINATIONS

Effective Date: 7/25/93

AN ACT Relating to higher education; and amending RCW 28B.15.820.

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

**Sec. 1.** RCW 28B.15.820 and 1985 c 390 s 35 are each amended to read as follows:

(1) Each institution of higher education shall deposit two and one-half percent of revenues collected from tuition and services and activities fees in an institutional long-term loan fund which is hereby created and which shall be held locally. Moneys in such fund shall be used to make guaranteed loans to eligible students except as provided for in subsection (10) of this section.

(2) An "eligible student" for the purposes of this section is a student registered for at least six credit hours or the equivalent, who is eligible for resident tuition and fee rates as defined in RCW 28B.15.012 through 28B.15.015, and who is a "needy student" as defined in RCW 28B.10.802.

(3) The amount of the loans made under subsection (1) of this section shall not exceed the demonstrated financial need of the student. Each institution shall establish loan terms and conditions which shall be consistent with the terms of the guaranteed loan program established by 20 U.S. Code Section 1071 et seq., as now or hereafter amended. All loans made shall be guaranteed by the Washington student loan guaranty association or its successor agency. Institutions are hereby granted full authority to operate as an eligible lender under the guaranteed loan program.

(4) Before approving a guaranteed loan, each institution shall analyze the ability of the student to repay the loan based on factors which include, but are not limited to, the student's accumulated total education loan burdens and the employment opportunities and average starting salary characteristics of the student's chosen fields of study. The institution shall counsel the student on the advisability of acquiring additional debt, and on the availability of other forms of financial aid.

(5) Each institution is responsible for collection of loans made under subsection (1) of this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Institutions shall cooperate with other lenders and the Washington student loan guaranty association, or its successor agency, in the coordinated collection of guaranteed loans, and shall assure that the guarantability of the loans is not violated. Collection and servicing of loans under subsection (1) of this section shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency: PROVIDED, That institutions be permitted to perform such servicing if specifically recognized to do so by the Washington student loan guaranty association or its successor agency. Collection and servicing of loans made by community colleges under subsection (1) of this section shall be coordinated by the state board for community and technical colleges (~~(education)~~) and shall be conducted under procedures adopted by such state board.

(6) Receipts from payment of interest or principal or any other subsidies to which institutions as lenders are entitled, which are paid by or on behalf of borrowers of funds under subsection (1) of this section, shall be deposited in each institution's general local fund and shall be used to cover the costs of making the loans under subsection (1) of this section and maintaining necessary records and making collections under subsection (5) of this section: PROVIDED, That such costs shall not exceed five percent of aggregate outstanding loan (~~(principle))~~ principal. Institutions shall maintain accurate records of such costs, and all receipts beyond those necessary to pay such costs, shall be used for the support of the institution's operating budget.

(7) The boards of regents of the state universities, the boards of trustees of the regional universities and The Evergreen State College, and the state board for community and technical colleges (~~(education)~~), on behalf of the community colleges, shall each adopt necessary rules and regulations to implement this section.

(8) Lending activities under this section shall be directed toward students who would not normally have access to educational loans from private financial institutions in Washington state, and maximum use shall be made of secondary markets in the support of loan consolidation.

(9) Short-term interim loans, not to exceed one hundred twenty days, may be made from the institutional long-term loan fund to students eligible for guaranteed student loans and whose receipt of such loans is pending. Such short-term loans shall not be subject to the guarantee restrictions or the constraints of federal law imposed by subsection (3) of this section. No such loan shall be made to any student who is known by the institution to be in default or delinquent in the payment of any outstanding student loan.

(10) Any moneys deposited in the institutional long-term loan fund (~~(which)~~) that are not used in making long or short term loans (~~(or transferred to institutional operating budgets)~~) may be used by the institution for locally-administered financial aid programs for needy students, such as need-based institutional employment programs or need-based tuition and fee waiver programs. These funds shall be used in addition to and not to replace institutional funds which would otherwise support these locally-administered financial aid programs. First priority in the use of these funds shall be given to needy students who have accumulated excessive educational loan burdens. An excessive educational loan burden is a burden that will be difficult to repay given employment opportunities and average starting salaries in the student's chosen fields of study. Second priority in the use of these funds shall be given to needy single parents, to assist these students with their educational expenses, including expenses associated with child care and transportation.

Passed the House March 9, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 174**

[House Bill 1637]

**MUNICIPAL STREET RAILWAY DEFINED AS PUBLIC WORK**

**Effective Date: 7/25/93**

AN ACT Relating to the definition of public work; and amending RCW 39.04.010.

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

**Sec. 1.** RCW 39.04.010 and 1989 c 363 s 5 are each amended to read as follows:

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein(~~(, but nothing herein shall apply to the construction, alteration, repair, or improvement of any municipal street railway system)~~). All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020.

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster under the authority of RCW 39.04.150, 35.22.620, 28B.10.355, 35.82.075, and 57.08.050 need not be advertised.

Passed the House March 12, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.



## CHAPTER 175

[Substitute House Bill 1893]

## MOTOR VEHICLE BUYERS' AGENTS—REGULATION OF

Effective Date: 7/25/93

AN ACT Relating to motor vehicle dealers' buyer's agents relationships; amending RCW 46.70.041 and 46.70.180; reenacting and amending RCW 46.70.011; and adding a new section to chapter 46.70 RCW.

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

**Sec. 1.** RCW 46.70.011 and 1989 c 337 s 11 and 1989 c 301 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (4) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;

(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles.

(4) The term "vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which he is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or his authorized representative, who, on behalf of the legal or registered owner of a used mobile home negotiates the purchase, sale, or exchange of the used mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the used mobile home is located and the real estate broker is not acting as an agent, subagent, or representative of a vehicle dealer licensed under this chapter; or

(g) Owners who are also operators of the special highway construction equipment or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required as defined in RCW 46.16.010; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party.

(5) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to lease vehicles on behalf of a vehicle dealer.

(6) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

(7) "Director" means the director of licensing.

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or

promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(9) "Established place of business" means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(10) "Principal place of business" means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(11) "Subagency" means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

(12) "Temporary subagency" means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(13) "Wholesale vehicle dealer" means a vehicle dealer who buys and sells other than at retail.

(14) "Retail vehicle dealer" means a vehicle dealer who may buy and sell at both wholesale and retail.

(15) "Listing dealer" means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(16) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(17) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions.

(18) "Buyer's agent" means any person, firm, partnership, association, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for the services.

**Sec. 2.** RCW 46.70.041 and 1990 c 250 s 64 are each amended to read as follows:

(1) Every application for a vehicle dealer license shall contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his fingerprints, the honesty, truthfulness, and good reputation of the applicant for the license, or of the officers of a corporation making the application;

(b) The applicant's form and place of organization including if the applicant is a corporation, proof that the corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has any unsatisfied judgment in any federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime which directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners;

(f) A business telephone with a listing in the local directory;

(g) The name or names of new vehicles the vehicle dealer wishes to sell;

(h) The names and addresses of each manufacturer from whom the applicant has received a franchise;

(i) Whether the applicant intends to sell used vehicles, and if so, whether he has space available for servicing and repairs;

(j) A certificate by a representative of the department, that the applicant's principal place of business and each subagency business location in the state of Washington meets the location requirements as required by this chapter. The certificate shall include proof of the applicant's ownership or lease of the real property where the applicant's principal place of business is established;

(k) A copy of a current service agreement with a manufacturer, or distributor for a foreign manufacturer, requiring the applicant, upon demand of any customer receiving a new vehicle warranty to perform or arrange for, within a reasonable distance of his established place of business, the service repair and replacement work required of the manufacturer or distributor by such vehicle warranty. This requirement applies only to applicants seeking to sell, to exchange, to offer, to auction, to solicit, ~~((or))~~ to advertise, or to broker new or current-model vehicles with factory or distributor warranties;

(l) The class of vehicles the vehicle dealer will be buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising, and which classification or classifications the dealer wishes to be designated as;

(m) Any other information the department may reasonably require.

(2) If the applicant is a manufacturer the application shall contain the following information to the extent it is applicable to the applicant:

(a) The name and address of the principal place of business of the applicant and, if different, the name and address of the Washington state representative of the applicant;

(b) The name or names under which the applicant will do business in the state of Washington;

(c) Evidence that the applicant is authorized to do business in the state of Washington;

(d) The name or names of the vehicles that the licensee manufactures;

(e) The name or names and address or addresses of each and every distributor, factory branch, and factory representative;

(f) The name or names and address or addresses of resident employees or agents to provide service or repairs to vehicles located in the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured, unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(g) Any other information the department may reasonably require.

**Sec. 3.** RCW 46.70.180 and 1990 c 44 s 14 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing

or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle said "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding said "on

deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his customary total customer deposits for vehicles for future delivery.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(12) For a buyer's agent acting directly or through a subsidiary to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) said cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion,

intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (11)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

~~((12))~~ (15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

NEW SECTION. Sec. 4. A new section is added to chapter 46.70 RCW to read as follows:

The regulation of buyers' agents is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Activities of buyers' agents prohibited under RCW 46.70.180 (11), (12), or (13) are not reasonable in relation to the development and preservation of business. A violation of RCW 46.70.180 (11), (12), or (13) constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW.



Passed the House March 17, 1993.  
Passed the Senate April 9, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 176**

[House Bill 1142]

**CHECK SELLERS—BONDING AND SECURITY REQUIREMENTS****Effective Date: 4/30/93**

AN ACT Relating to requiring a bond or other security from persons seeking a license to sell checks, drafts, or money orders; amending RCW 31.45.030; and declaring an emergency.

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

**Sec. 1.** RCW 31.45.030 and 1991 c 355 s 3 are each amended to read as follows:

(1) Except as provided in RCW 31.45.020, no check cashier or seller may engage in business without first obtaining a license from the supervisor in accordance with this chapter.

(2) Each application for a license shall be in writing in a form prescribed by the supervisor and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check cashier or seller;

(d) Such other data, financial statements, and pertinent information as the supervisor may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the supervisor. Such fees collected shall be deposited to the credit of the banking examination fund in accordance with RCW 43.19.095.

~~(5)(a) ((If the applicant intends to engage in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose, the supervisor shall require the applicant to obtain and maintain an adequate fidelity bond or blanket fidelity bond covering each officer, employee, or agent having access to funds collected by or for the licensee. The bond shall be for the protection of the public against loss suffered through embezzlement by any~~

person having access to funds collected by or for the licensee or having authority to draw against such funds, or from mysterious disappearance, theft, holdup, or burglary)) Before granting a license to sell checks, drafts, or money orders under this chapter, the supervisor shall require that the licensee file with the supervisor a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the supervisor. The supervisor shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the supervisor and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the supervisor. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid

against the bond, or deposit, without regard to the date of filing of any claim or action.

(b) In lieu of ((providing a bond, the licensee may deposit with the supervisor security in the form and amount determined by the supervisor sufficient to protect the public against loss suffered through embezzlement by any person having access to funds collected by or for the licensee or having authority to draw against such funds, or from mysterious disappearance, theft, holdup, or burglary)) the surety bond required by this section, the applicant may file with the supervisor a deposit consisting of cash or other security acceptable to the supervisor in an amount equal to the penal sum of the required bond. The supervisor may adopt rules necessary for the proper administration of the security. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

(c) Such security may be sold by the supervisor at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the supervisor. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the supervisor additional security sufficient to meet the amount required by the supervisor. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 1, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 177

[Substitute House Bill 1543]

## WORKERS' COMPENSATION—LONGSHORE AND HARBOR WORKERS

Effective Date: 4/30/93

AN ACT Relating to longshore and harbor workers' compensation act insurance; amending RCW 48.22.070 and 48.22.072; amending 1992 c 209 s 6 (uncodified); and declaring an emergency.

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

**Sec. 1.** RCW 48.22.070 and 1992 c 209 s 2 are each amended to read as follows:

(1) Before July 1, 1992, the commissioner shall adopt rules establishing a reasonable plan to insure that workers' compensation coverage as required by the United States (~~(longshoreman's)~~) longshore and harbor (~~(worker's)~~) workers' compensation act, 33 U.S.C. Secs. 901 through 950, and maritime employer's liability coverage incidental to the workers' compensation coverage is available to those unable to purchase it through the normal insurance market. This plan shall require the participation of all authorized insurers writing primary (~~(and)~~) or excess United States longshore and harbor workers' compensation insurance (~~(or reinsurance)~~) and the Washington state industrial insurance fund as defined in RCW 51.08.175 which is authorized to participate in the plan and to make payments in support of the plan in accordance with this section. Any underwriting losses incurred by the plan shall be shared by plan participants in accordance with the following ratios: The state industrial insurance fund, fifty percent; and authorized insurers writing primary or excess United States (~~(longshoreman's)~~) longshore and harbor workers' compensation insurance, (~~(forty-eight)~~) fifty percent(~~(; and authorized insurers writing excess workers' compensation insurance or reinsurance, two percent)~~).

(2) The Washington state industrial insurance fund (~~(shall)~~) may obtain or provide reinsurance coverage for the plan created under subsection (1) of this section (~~(on an excess of loss basis that would cover plan losses exceeding the net earned and retained premiums written including investment income of the plan as)~~) the terms of which shall be negotiated between the state fund and the plan. (~~(If such)~~) This coverage (~~(is)~~) shall not be obtained or provided (~~(by July 1, 1992, or)~~) if the commissioner determines that the premium to be charged (~~(for such coverage)~~) would result in unaffordable rates for coverage provided by the plan (~~(, the industrial insurance fund shall be relieved of responsibility for obtaining or providing excess of loss coverage)~~). In considering whether excess of loss coverage premiums would result in unaffordable rates for workers' compensation coverage provided by the plan, the commissioner shall compare the resulting plan rates to those provided under any similar pool or plan of other states in existence prior to July 1, 1992.

(3) An applicant for plan insurance, a person insured under the plan, or an insurer, affected by a ruling or decision of the manager or committee designated to operate the plan may appeal to the commissioner for resolution of a dispute.

In adopting rules under this section, the commissioner shall require that the plan use generally accepted actuarial principles for rate making.

**Sec. 2.** RCW 48.22.072 and 1992 c 209 s 4 are each amended to read as follows:

The committee appointed pursuant to RCW 48.22.071 shall submit a report to the legislature no later than January 1, ~~((1993, that examines all aspects of the United States longshoreman's and harbor worker's act, 22 U.S.C. Secs. 901 through 950, coverage, and incidental maritime liability coverage, as it applies to Washington workers and employers. This study shall include but not be limited to the ability of private insurers to provide affordable coverage to eligible employers;))~~ 1994 and 1995, summarizing the activities of the plan adopted under RCW 48.22.070 during its most recent fiscal year and since its inception. The committee shall in each report examine, based on the experience of the plan or other information made available to it, whether the Washington state industrial insurance fund should participate in the plan adopted pursuant to RCW 48.22.070; whether there are methods that will satisfy the intent of chapter 209, Laws of 1992 that will not involve the Washington state industrial insurance fund; and the feasibility of requiring that this coverage be made directly available through the Washington state industrial insurance fund.

**Sec. 3.** 1992 c 209 s 6 (uncodified) is amended to read as follows:

This act shall expire on July 1, ~~((1993))~~ 1995.

**NEW SECTION.** **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 15, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 178

[House Bill 1530]

### PROPERTY TAX EXEMPTION FOR PERSONS CONFINED TO HOSPITAL OR NURSING HOME EXTENDED

Effective Date: 4/30/93

AN ACT Relating to property tax exemptions for retired persons confined to hospitals and nursing homes; amending RCW 84.36.381; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 84.36.381 and 1992 c 187 s 1 are each amended to read as follows:

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the

year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied (~~or is~~);

(b) The residence is occupied by a spouse and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home or hospital costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must be sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the preceding year by reason of the death of the person's spouse, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after the death of the spouse by twelve.

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of twenty-six thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less but greater than fifteen thousand dollars shall be exempt from all regular property taxes on the greater of thirty thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed fifty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of fifteen thousand dollars or less shall be exempt from all regular property taxes on the greater of thirty-four thousand dollars or fifty percent of the valuation of his or her residence.

NEW SECTION. **Sec. 2.** This act shall be effective for taxes levied for collection in 1993 and thereafter.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 11, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 179

[House Bill 1991]

### HOME HEALTH VISITOR PROGRAM

Effective Date: 4/30/93

AN ACT Relating to the home health visitor program; adding a new section to chapter 43.70 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The incidence of child abuse and neglect has reached epidemic proportions in the nation. In Washington state alone, there were sixty-two thousand five hundred reports of child abuse and neglect in 1991. That is one occurrence for every twenty-one children in this state. Research shows that most reported cases of physical abuse and neglect occurs among children under the age of five. Research also shows that child abuse and neglect can be prevented. One of the most effective strategies for preventing child abuse and neglect is to provide parents who are most at risk of abuse, with education and supportive services beginning at the time their infant is born and continuing in the home. Therefore, it is the legislature's intent to develop the home health visitor program in this state.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70 RCW to read as follows:

The department of health, the department of social and health services, the department of community development, the superintendent of public instruction, and the employment security department shall, collectively and collaboratively, develop a plan for a home health visitor program that shall have as its primary purpose the prevention of child abuse and neglect through the provision of selected educational and supportive services to high risk parents of newborns.

(1) The program shall: (a) Be community-based; (b) include early hospital-based screening to identify high risk parents of newborns; (c) provide for an effective, in-home outreach and support program for high risk parents of newborns that involves: (i) Frequent home visits, (ii) parent training on early childhood development, parenting, and the stress factors that lead to abuse and neglect, and (iii) referrals to needed social and health services; and (d) demonstrate effective coordination among current community-based programs that may also serve high risk parents and their infants, including child abuse prevention programs, first steps, second steps, the early childhood education and assistance program, the healthy kids program, child welfare services, the women, infants, and child program, the high priority infant tracking program, the birth to six program, local and state public health prevention and early intervention services, and other services as identified.

(2) The plan shall: (a) Include an estimate and a description of the high risk groups to be served; (b) detail the screening process and mechanisms to be used to identify high risk parents; (c) detail the services to be included in the in-home program; (d) describe staffing that may include the use of teams of professionals, paraprofessionals, and volunteers; (e) describe how the program will be evaluated, including the measurable outcomes to be achieved; and (f) provide an estimate of the costs to fully implement the program state-wide, and for possible consideration, a series of pilot projects with a phased-in schedule.

(3) The plan shall be provided to the appropriate legislative committees by December 1, 1993.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 12, 1993.

Passed the Senate April 18, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 180

[House Bill 1864]

## ACCELERANT DETECTION DOGS—HARMING OF

Effective Date: 7/25/93

AN ACT Relating to accelerant detection dogs; amending RCW 4.24.410 and 9A.76.200; and prescribing penalties.

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

**Sec. 1.** RCW 4.24.410 and 1989 c 26 s 1 are each amended to read as follows:

(1) As used in this section:

(a) "Police dog" means a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

(b) "Accelerant detection dog" means a dog used exclusively for accelerant detection by the state fire marshal or a fire department and under the control of the state fire marshal or his or her designee or a fire department handler.

(c) "Dog handler" means a law enforcement officer who has successfully completed training as prescribed by the Washington state criminal justice training commission in police dog handling, or in the case of an accelerant detection dog, the state fire marshal's designee or an employee of the fire department authorized by the fire chief to be the dog's handler.

(2) Any dog handler who uses a police dog in the line of duty in good faith is immune from civil action for damages arising out of such use of the police dog or accelerant detection dog.

**Sec. 2.** RCW 9A.76.200 and 1989 c 26 s 2 are each amended to read as follows:

(1) A person is guilty of harming a police dog or accelerant detection dog if he or she maliciously injures, disables, shoots, or kills by any means any dog that the person knows or has reason to know to be a police dog or accelerant detection dog, as defined in RCW 4.24.410, whether or not the dog is actually engaged in police or accelerant detection work at the time of the injury.

(2) Harming a police dog or accelerant detection dog is a class C felony.

Passed the House March 12, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

CHAPTER 181

[Substitute House Bill 1497]

APPROVAL OF FOREIGN BRANCH CAMPUSES

Effective Date: 7/25/93

AN ACT Relating to accredited foreign branch campuses; amending RCW 23B.15.010, 24.03.305, and 82.04.170; adding a new section to chapter 23B.15 RCW; adding a new section to chapter 24.03 RCW; adding a new section to chapter 28B.85 RCW; adding a new section to chapter 50.04 RCW; adding a new section to chapter 51.12 RCW; adding a new section to chapter 82.04 RCW; and adding a new chapter to Title 28B RCW.

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

**NEW SECTION. Sec. 1.** The legislature finds that it has previously declared in RCW 28B.107.005 that it is important to the economic future of the state to promote international awareness and understanding, and in RCW 1.20.100 and 28A.630.300, that the state's economy and economic well-being depends heavily on foreign trade and international exchange.

The legislature finds that it is appropriate that such policies should be implemented by encouraging universities and colleges domiciled in foreign countries to establish branch campuses in Washington and that it is also important to those foreign colleges and universities that their status as authorized foreign degree-granting institutions be recognized by this state to facilitate the establishment and operation of such branch campuses.

In the furtherance of such policy, the legislature adopts the foreign degree-granting institution approved branch campus act.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Degree" means any designation, appellation, certificate, letters or words including, but not limited to, "associate," "bachelor," "masters," "doctorate," or "fellow" that signifies, or purports to signify, satisfactory and successful completion of requirements of a postsecondary academic program of study.

(2) "Foreign degree-granting institution" means a public or private college or university, either profit or nonprofit:

(a) That is domiciled in a foreign country;

(b) That offers in its country of domicile credentials, instruction, or services prerequisite to the obtaining of an academic or professional degree granted by such college or university; and

(c) That is authorized under the laws or regulations of its country of domicile to operate a degree-granting institution in that country.

(3) "Approved branch campus" means a foreign degree-granting institution's branch campus that has been approved by the higher education coordinating board to operate in the state.

(4) "Branch campus" means an educational facility located in the state that:

(a) Is either owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in

which the foreign degree-granting institution is the sole or controlling shareholder or member; and

(b) Provides courses solely and exclusively to students enrolled in a degree-granting program offered by the foreign degree-granting institution who:

(i) Have received academic credit for courses of study completed at the foreign degree-granting institution in its country of domicile;

(ii) Will receive academic credit towards their degree from the foreign degree-granting institution for the courses of study completed at the educational facility in the state; and

(iii) Will return to the foreign degree-granting institution in its country of domicile for completion of their degree-granting program or receipt of their degree.

(5) "Board" means the higher education coordinating board.

**NEW SECTION.** Sec. 3. A foreign degree-granting institution that submits evidence satisfactory to the board of its authorized status in its country of domicile and its intent to establish an educational facility in the state is entitled to operate a branch campus in the state. Upon receipt of the satisfactory evidence, the board shall certify that the branch campus of the foreign degree-granting institution is approved to operate in the state under this chapter, for as long as the foreign degree-granting institution retains its authorized status in its country of domicile.

**NEW SECTION.** Sec. 4. A branch campus of a foreign degree-granting institution previously found by the board to be exempt from chapter 28B.85 RCW may continue to operate in the state. However, within one year of the effective date of this section, the institution shall provide evidence of authorization as required under section 3 of this act. Upon receipt of the satisfactory evidence, the board shall certify that the branch campus of the foreign degree-granting institution is approved to operate in the state under this chapter.

**NEW SECTION.** Sec. 5. A new section is added to chapter 23B.15 RCW to read as follows:

In addition to those acts that are specified in RCW 23B.15.010(2), a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.— RCW (sections 1 through 4 of this act) shall not be deemed to transact business in the state solely because it:

(1) Owns and controls an incorporated branch campus in this state;

(2) Pays the expenses of tuition, or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or

(3) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.

**NEW SECTION.** Sec. 6. A new section is added to chapter 24.03 RCW to read as follows:

In addition to those acts that are specified in RCW 24.03.305 (1) through (11), a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.— RCW (sections 1 through 4 of this act) shall not be deemed to transact business in the state solely because it:

- (1) Owns and controls an incorporated branch campus in this state;
- (2) Pays the expenses of tuition, or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or
- (3) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.

**NEW SECTION. Sec. 7.** A new section is added to chapter 28B.85 RCW to read as follows:

This chapter shall not apply to any approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.— RCW (sections 1 through 4 of this act).

**NEW SECTION. Sec. 8.** A new section is added to chapter 50.04 RCW to read as follows:

The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 50.04.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in section 2 of this act in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile.

**NEW SECTION. Sec. 9.** A new section is added to chapter 51.12 RCW to read as follows:

The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 51.12.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in section 2 of this act in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile.

**NEW SECTION. Sec. 10.** A new section is added to chapter 82.04 RCW to read as follows:

An approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.— RCW (sections 1 through 4 of this act) is considered an educational institution for the purpose of the deduction of tuition fees provided by RCW 82.04.170 in those instances where it is recognized as an organization exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c).

**Sec. 11.** RCW 23B.15.010 and 1990 c 178 s 7 are each amended to read as follows:

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; ((e))

(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state; or

(m) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.— RCW (sections 1 through 4 of this act) and in accordance with section 5 of this act.

(3) The list of activities in subsection (2) of this section is not exhaustive.

**Sec. 12.** RCW 24.03.305 and 1986 c 240 s 43 are each amended to read as follows:

No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Creating evidences of debt, mortgages or liens on real or personal property.

(5) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(6) Effecting sales through independent contractors.

(7) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(8) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(9) Securing or collecting debts or enforcing any rights in property securing the same.

(10) Transacting any business in interstate commerce.

(11) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(12) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.— RCW (sections 1 through 4 of this act) and in accordance with section 6 of this act.

**Sec. 13.** RCW 82.04.170 and 1992 c 206 s 1 are each amended to read as follows:

"Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when

the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.— RCW (sections 1 through 4 of this act), and in accordance with section 10 of this act or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

**NEW SECTION. Sec. 14.** Sections 1 through 4 of this act shall constitute a new chapter in Title 28B RCW.

Passed the House March 15, 1993.  
 Passed the Senate April 15, 1993.  
 Approved by the Governor April 30, 1993.  
 Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 182

[Substitute House Bill 1518]

### WATER TRAIL RECREATION PROGRAM

Effective Date: 7/25/93

AN ACT Relating to the water trail recreation program; adding new sections to chapter 43.51 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature recognizes the increase in water-oriented recreation by users of human and wind-powered, beachable vessels such as kayaks, canoes, or day sailors on Washington's waters. These recreationists frequently require overnight camping facilities along the shores of public or private beaches. The legislature now creates a water trail recreation program, to be administered by the Washington state parks and recreation commission.

**NEW SECTION. Sec. 2.** In addition to its other powers, duties, and functions, the commission may:

(1) Plan, construct, and maintain suitable facilities for water trail activities on lands administered or acquired by the commission or as authorized on lands administered by tribes or other public agencies or private landowners by agreement.

(2) Provide and issue, upon payment of the proper fee, with the assistance of those authorized agents as may be necessary for the convenience of the public,

water trail permits to utilize designated water trail facilities. The commission may, after consultation with the water trail advisory committee, adopt rules authorizing reciprocity of water trail permits provided by another state or Canadian province, but only to the extent that a similar exemption or provision for water trail permits is issued by that state or province.

(3) Compile, publish, distribute, and charge a fee for maps or other forms of public information indicating areas and facilities suitable for water trail activities.

(4) Contract with a public agency, private entity, or person for the actual conduct of these duties.

(5) Work with individuals or organizations who wish to volunteer their time to support the water trail recreation program.

NEW SECTION. Sec. 3. The commission may make water trail program grants to public agencies or tribal governments and may contract with any public agency, tribal government, entity, or person to develop and implement water trail programs.

NEW SECTION. Sec. 4. The commission is not liable for unintentional injuries to users of facilities administered for water trail purposes under this chapter, whether the facilities are administered by the commission or by any other entity or person. However, nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

NEW SECTION. Sec. 5. A person may not participate as a user of the water trail recreation program without first obtaining a water trail permit. A person must renew this permit on an annual basis in order to continue to participate as a user of the program. The fee for the issuance of the state-wide water trail permit for each year shall be determined by the commission after consultation with the water trail advisory committee. All state-wide water trail permits shall expire on the last day of December of the year for which the permit is issued.

NEW SECTION. Sec. 6. The water trail program account is created in the state treasury. All receipts from sales of materials pursuant to section 2 of this act, from state-wide water trail permit fees collected pursuant to section 5 of this act, and all monetary civil penalties collected pursuant to section 8 of this act shall be deposited in the water trail program account. Any gifts, grants, donations, or moneys from any source received by the commission for the water trail program shall also be deposited in the water trail program account. Moneys in the account may be spent only after appropriation to the commission, and may be used solely for water trail program purposes, including: (1) Administration, acquisition, development, operation, planning, and maintenance of water trail lands and facilities, and grants or contracts therefor; and (2) the development and



implementation of water trail informational, safety, enforcement, and education programs, and grants or contracts therefor.

**NEW SECTION.** Sec. 7. The commission may, after consultation with the water trail advisory committee, adopt rules to administer the water trail program and facilities on areas owned or administered by the commission. Where water trail facilities administered by other public or private entities are incorporated into the water trail system, the rules adopted by those entities shall prevail. The commission is not responsible or liable for enforcement of these alternative rules.

**NEW SECTION.** Sec. 8. Violation of the provisions of the commission's rules governing the use of water trail facilities and property shall constitute a civil infraction, punishable as provided under chapter 7.84 RCW.

**NEW SECTION.** Sec. 9. (1) There is created a water trail advisory committee to advise the parks and recreation commission in the administration of sections 1 through 8 of this act and to assist and advise the commission in the development of water trail facilities and programs.

(2) The advisory committee shall consist of twelve members, who shall be appointed as follows:

(a) Five public members representing recreational water trail users, to be appointed by the commission;

(b) Two public members representing commercial sectors with an interest in the water trail system, to be appointed by the commission;

(c) One representative each from the department of natural resources, the department of wildlife, the Washington state association of counties, and the association of Washington cities, to be appointed by the director of the agency or association. The director of the Washington state parks and recreation commission or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

(3) Except as provided in this section, the terms of the public members appointed by the commission shall begin on January 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of an unexpired term. In making the initial appointments to the advisory committee, the commission shall appoint two public members to serve one year, two public members to serve for two years, and three public members to serve for three years. Public members of the advisory committee may be reimbursed from the water trail program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The committee shall select a chair and adopt rules necessary to govern its proceedings. The committee shall meet at the times and places it determines, not less than twice a year, and additionally as required by the committee chair or by majority vote of the committee.

**NEW SECTION.** Sec. 10. Sections 1 through 9 of this act are each added to chapter 43.51 RCW.

Passed the House March 16, 1993.  
Passed the Senate April 16, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

**CHAPTER 183**

[Engrossed Substitute House Bill 1622]

FERTILIZERS—REGULATION OF

Effective Date: 7/25/93

AN ACT Relating to the regulation of fertilizer; amending RCW 15.54.270, 15.54.330, 15.54.340, 15.54.350, 15.54.362, 15.54.370, 15.54.380, 15.54.414, 15.54.420, 15.54.436, 15.54.470, and 15.54.800; adding new sections to chapter 15.54 RCW; and repealing RCW 15.54.272, 15.54.274, 15.54.276, 15.54.278, 15.54.280, 15.54.281, 15.54.282, 15.54.284, 15.54.286, 15.54.288, 15.54.290, 15.54.292, 15.54.294, 15.54.296, 15.54.297, 15.54.298, 15.54.300, 15.54.302, 15.54.304, 15.54.306, 15.54.307, and 15.54.320.

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

**Sec. 1.** RCW 15.54.270 and 1987 c 45 s 1 are each amended to read as follows:

Terms used in this chapter (~~shall~~) have the meaning given to them in this chapter unless (~~where used~~) the context (~~thereof shall~~) clearly indicates (~~to the contrary~~) otherwise.

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackage form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures and other products exempted by the department by rule.

(5) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

(6) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(7) "Director" means the director of the department of agriculture.

(8) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

(9) "Distributor" means a person who distributes.

(10) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(11) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

<u>Total nitrogen (N)</u>	. . . . .	<u>percent</u>
<u>Available phosphoric acid (P2O5)</u>	. . .	<u>percent</u>
<u>Soluble potash (K2O)</u>	. . . . .	<u>percent</u>

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO4.2H2O) shall be given along with the percentage of total sulfur.

(12) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(13) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(14) "Licensee" means the person who receives a license to distribute a fertilizer under the provisions of this chapter.

(15) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

(16) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(17) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(18) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(19) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(20) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(21) "Percent" or "percentage" means the percentage by weight.

(22) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(23) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(24) "Ton" means the net weight of two thousand pounds avoirdupois.

(25) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 15.54 RCW to read as follows:

(1) No person may distribute a commercial fertilizer in this state, except packaged fertilizers, until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes nonpackaged commercial fertilizer in Washington state. An application for each location shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of twenty-five dollars per location. The license shall expire on the master license expiration date.

(2) An application for license shall include the following:

(a) The name and address of licensee.

(b) Any other information required by the department by rule.

(3) The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to master license expiration date, a delinquency fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the

applicant before the renewal license shall be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license.

**NEW SECTION. Sec. 3.** A new section is added to chapter 15.54 RCW to read as follows:

(1) No person may distribute in this state a packaged fertilizer until it is registered with the department by the distributor whose name appears on the label. An application for each packaged fertilizer product shall be made on a form furnished by the department and shall be accompanied by an initial fee of twenty-five dollars for the first product and ten dollars for each additional product. Labels for each product shall accompany the application. All companies planning to mix packaged customer-formula fertilizers shall include the statement "customer formula grade mixes" under the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product. Upon the approval of an application by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30th of each year except that for the period beginning January 1, 1994, the registration shall expire on June 30, 1995.

(2) An application for registration shall include the following:

- (a) The product name;
- (b) The brand and grade;
- (c) The guaranteed analysis;
- (d) Name and address of the registrant;
- (e) Labels for each product being registered;
- (f) Any other information required by the department by rule.

(3) If an application for renewal of the product registration provided for in this section is not filed prior to July 1st of any one year, a penalty of ten dollars per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration shall be issued. The assessment of this late collection fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior registration.

**Sec. 4.** RCW 15.54.330 and 1967 ex.s. c 22 s 21 are each amended to read as follows:

(1) The department shall examine the packaged fertilizer product registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular (~~(brand and grade of commercial fertilizer)~~) packaged fertilizer products shall be registered by the department and

a certificate of registration shall be issued to the applicant. ~~((The department may refuse registration, or cancel the registration, of any brand or grade of commercial fertilizer, the distribution of which would be in violation of any provisions of this chapter.))~~

(2) In reviewing the packaged fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations, product review evaluations, or other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.

(3) In determining whether approval of a labeling statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement describing the methodology of laboratory analysis utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.

Sec. 5. RCW 15.54.340 and 1987 c 45 s 12 are each amended to read as follows:

(1) Any ~~((commercial))~~ packaged fertilizer distributed in this state in containers shall have placed on or affixed to the ~~((container))~~ package a label setting forth in clearly legible and conspicuous form the following information:

(a) The net weight;

(b) The product name, brand, and grade. The grade ~~((shall not be))~~ is not required ~~((when))~~ if no primary nutrients are claimed;

(c) The guaranteed analysis;

(d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated; and

(e) Other information as required by the department by rule.

(2) If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by subsection (1) above shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant or licensee for a period of ~~((six))~~ twelve months and shall be available to the department upon request: PROVIDED, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

**Sec. 6.** RCW 15.54.350 and 1987 c 45 s 13 are each amended to read as follows:

(1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants or nonlicensees an inspection fee of ~~((nine))~~ fifteen cents per ton of lime and ~~((eighteen))~~ thirty cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) ~~((In computing the tonnage on which the inspection fee must be paid, distribution of commercial fertilizers in packages weighing five pounds net or less, and distribution of commercial fertilizers for shipment to points outside this state may be excluded.))~~ Distribution of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant or licensee who distributes to a nonregistrant or nonlicensee is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer.

**Sec. 7.** RCW 15.54.362 and 1987 c 45 s 14 are each amended to read as follows:

(1) Every registrant or licensee who distributes commercial fertilizer in this state shall file a semiannual report ~~((with the department))~~ on forms provided by the department setting forth the number of net tons of each commercial fertilizer so distributed in this state. The reports will cover the following periods: January 1 through June 30 and July 1 through December 31 of each year. ~~((The reports shall be due on or before thirty days following the close of the reporting period: PROVIDED, That))~~ Upon permission of the department, an annual statement under oath may be filed for the annual reporting period of July 1 through June 30 of any year by any person distributing within the state less than one hundred tons for each six-month period during any calendar year, and upon filing such statement, such person shall pay the inspection fee required under RCW 15.54.350. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state shall include the inspection fees with the report on the same dates and for the same reporting periods mentioned in subsection (1) of this section. If in one year a registrant or licensee distributes less than eighty-three tons of commercial fertilizer or less than one hundred sixty-seven tons of commercial lime or equivalent combination of the two, the registrant or licensee shall pay the minimum inspection fee. The minimum inspection fee shall be twenty-five dollars per year.

(3) The department may, upon request, require registrants or licensees to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4) Semiannual or annual reports filed after the close of the corresponding reporting period shall pay a late filing fee of twenty-five dollars. Inspection fees

which are due and have not been remitted to the department by the due date shall have a late-collection fee of ten percent, but not less than ~~((five))~~ twenty-five dollars, added to the amount due when payment is finally made. The assessment of this late collection fee shall not prevent the department from taking any other action as provided for in this chapter.

(5) It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

**Sec. 8.** RCW 15.54.370 and 1987 c 45 s 16 are each amended to read as follows:

(1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in RCW ~~((15.54.300))~~ 15.54.270 and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the registrant or licensee and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the registrant or licensee a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction.

**Sec. 9.** RCW 15.54.380 and 1987 c 45 s 17 are each amended to read as follows:

(1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall



be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the commercial value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) above, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant or licensee. The department shall deposit the amount of the penalty into the fertilizer, agricultural mineral and lime account.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) above.

(4) The civil penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant or licensee paying said civil penalties.

**Sec. 10.** RCW 15.54.414 and 1987 c 45 s 21 are each amended to read as follows:

No person may distribute an adulterated commercial fertilizer. A commercial fertilizer (~~shall be deemed to be~~) is adulterated:

(1) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling; or

(3) If it contains unwanted viable seed.

**Sec. 11.** RCW 15.54.420 and 1987 c 45 s 22 are each amended to read as follows:

It shall be unlawful for any person to:

- (1) Distribute an adulterated or misbranded commercial fertilizer;
- (2) Fail, refuse, or neglect to place upon or attach to each ~~((container))~~ package of distributed commercial fertilizer a label containing all of the information required by this chapter;
- (3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter; ~~((or))~~
- (4) Distribute a ~~((brand or grade of commercial))~~ packaged fertilizer product which has not been registered with the department;
- (5) Distribute bulk fertilizer without holding a license to do so;
- (6) Distribute unregistered packaged fertilizer. It is the responsibility of the person who manufactures or subsequently packages that fertilizer to register it prior to distribution in this state;
- (7) Refuse or neglect to keep and maintain records, or to make reports when and as required; or
- (8) Make false or fraudulent records, invoices, or reports.

**Sec. 12.** RCW 15.54.436 and 1987 c 45 s 24 are each amended to read as follows:

The department may cancel the license to distribute commercial fertilizer or registration of any ~~((brand and grade of commercial)) packaged fertilizer product~~ or refuse to license a distributor or register any ~~((brand and grade of commercial)) packaged fertilizer product~~ as provided in this chapter ~~((, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of any provision of this chapter or any rule adopted thereunder. PROVIDED, That no registration may be revoked or refused until the registrant has been given the opportunity to appear for a hearing by the department))~~ due to:

- (1) An incomplete or insufficient license or registration application;
- (2) The misbranding or adulteration of a commercial fertilizer; or
- (3) A violation of this chapter or rules adopted under this chapter.

If the department cancels or refuses to renew an existing license or registration due to the misbranding or adulteration of a commercial fertilizer or due to a violation of this chapter or a rule adopted hereunder, the licensee/registrant or applicant may request a hearing as provided for in chapter 34.05 RCW.

**Sec. 13.** RCW 15.54.470 and 1967 ex.s. c 22 s 35 are each amended to read as follows:

(1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a ~~((brand or grade))~~ packaged fertilizer product or to stop the sale of fertilizers for violations of this

chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule (~~(or regulation promulgated)~~) adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond.

**Sec. 14.** RCW 15.54.800 and 1987 c 45 s 9 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapter ~~((s)) 34.05 ((and 42.32))~~ RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Definitions of terms;

(b) Determining standards for labeling and registration of fertilizers and agricultural minerals and limes;

(c) The collection and examination of fertilizers and agricultural mineral and limes;

(d) Recordkeeping by registrants and licensees;

(e) Regulation of the use and disposal of fertilizers for the protection of ground water and surface water; and

(f) The safe handling, transportation, storage, display, and distribution of fertilizers.

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

(1) RCW 15.54.272 and 1987 c 45 s 2 & 1967 ex.s. c 22 s 2;

(2) RCW 15.54.274 and 1967 ex.s. c 22 s 3;

(3) RCW 15.54.276 and 1987 c 45 s 3 & 1967 ex.s. c 22 s 4;

(4) RCW 15.54.278 and 1967 ex.s. c 22 s 5;

(5) RCW 15.54.280 and 1987 c 45 s 4 & 1967 ex.s. c 22 s 6;

(6) RCW 15.54.281 and 1987 c 45 s 6;

(7) RCW 15.54.282 and 1967 ex.s. c 22 s 7;

(8) RCW 15.54.284 and 1967 ex.s. c 22 s 8;

- (9) RCW 15.54.286 and 1967 ex.s. c 22 s 9;
- (10) RCW 15.54.288 and 1967 ex.s. c 22 s 10;
- (11) RCW 15.54.290 and 1967 ex.s. c 22 s 11;
- (12) RCW 15.54.292 and 1967 ex.s. c 22 s 12;
- (13) RCW 15.54.294 and 1967 ex.s. c 22 s 13;
- (14) RCW 15.54.296 and 1967 ex.s. c 22 s 14;
- (15) RCW 15.54.297 and 1987 c 45 s 5;
- (16) RCW 15.54.298 and 1967 ex.s. c 22 s 15;
- (17) RCW 15.54.300 and 1967 ex.s. c 22 s 16;
- (18) RCW 15.54.302 and 1967 ex.s. c 22 s 17;
- (19) RCW 15.54.304 and 1967 ex.s. c 22 s 18;
- (20) RCW 15.54.306 and 1987 c 45 s 7;
- (21) RCW 15.54.307 and 1987 c 45 s 8; and
- (22) RCW 15.54.320 and 1987 c 45 s 11 & 1967 ex.s. c 22 s 20.

Passed the House March 16, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 184

[House Bill 1815]

### VESSELS—RECKLESS OPERATION OR OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUG—RECODIFICATION

**Effective Date: 7/25/93**

AN ACT Relating to recodification of sections 604 through 607 of chapter 200, Laws of 1991; adding new sections to chapter 90.56 RCW; and recodifying RCW 88.16.210, 88.16.220, 88.16.230, and 88.16.240.

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

**NEW SECTION. Sec. 1.** RCW 88.16.210, 88.16.220, 88.16.230, and 88.16.240 are each recodified as sections in chapter 90.56 RCW.

Passed the House March 8, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 185

[House Bill 1923]

## ADVISORY COUNCIL ON HISTORIC PRESERVATION MEMBERSHIP—REVISIONS

Effective Date: 6/30/93

AN ACT Relating to the advisory council on historic preservation; amending RCW 27.34.250; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 27.34.250 and 1983 c 91 s 15 are each amended to read as follows:

(1) There is hereby established an advisory council on historic preservation, which shall be composed of nine members appointed by the governor as follows:

(a) The director of a state historical society or the director's designee to be selected from (i) the director of the Washington state historical society, (ii) the director of the Eastern Washington state historical society, and (iii) the director of the state capital historical society, to each serve on the council for one year on a rotating basis, the order of rotation to be determined by the governor;

(b) Six members of the public who are interested and experienced in matters to be considered by the council including the fields of history, architecture, and archaeology;

(c) ~~((The director of the Washington archaeological research center or the director's designee))~~ A representative from the Washington archaeological community; and

(d) A native American.

(2) Each member of the council appointed under subsection (1)(b), (c), and (d) of this section shall serve a four-year term, except that those members first appointed shall serve for terms of from one to four years as designated by the governor at the time of appointment, it being the purpose of this subsection to assure staggered terms of office.

(3) A vacancy in the council shall not affect its powers, but shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(4) The chairperson of the council shall be designated by the governor.

(5) Five members of the council shall constitute a quorum.

~~((6) The council shall cease to exist on June 30, 1993, unless extended by law for an additional fixed period of time.))~~

**NEW SECTION.** **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993.

Passed the House March 12, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 186**

[House Bill 1832]

**MALPRACTICE INSURANCE—MIDTERM BLANKET RATE  
REDUCTION NOT A RENEWAL**

**Effective Date: 7/25/93**

AN ACT Relating to midterm rate decreases for medical malpractice insurance; and amending RCW 48.18.2901.

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

**Sec. 1.** RCW 48.18.2901 and 1988 c 249 s 3 are each amended to read as follows:

(1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.290 unless one of the following situations exists:

(a) The insurer gives the named insured at least forty-five days' notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated, either directly or through its agent, its willingness to renew in writing to the named insured and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof; or

(c) The insured has procured equivalent coverage prior to the expiration of the policy period; or

(d) The contract is evidenced by a written binder containing a clearly stated expiration date which has expired according to its terms.

(2) Any insurer failing to include in the notice required by subsection (1)(b) of this section the amount of any increased premium resulting from a change of rates and an explanation of any change in the contract provisions shall renew the policy if so required by that subsection according to the rates and contract provisions applicable to the expiring policy: PROVIDED, That renewal based on the rates and contract provisions applicable to the expiring policy shall not prevent the insurer from making changes in the rates and/or contract provisions of the policy once during the term of its renewal after at least twenty days' advance notice of such change has been given to the named insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such

renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

(4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: PROVIDED, HOWEVER, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period or term of six months: PROVIDED, FURTHER, That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295, be considered as if written for successive policy periods or terms of one year.

(5) A midterm blanket reduction in rate, approved by the commissioner, for medical malpractice insurance shall not be considered a renewal for purposes of this section.

Passed the House March 15, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

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## CHAPTER 187

[Substitute Senate Bill 5520]

### CONTROLLED SUBSTANCES ACT—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to controlled substances definitions, standards, and schedules; amending RCW 69.50.201, 69.50.203, 69.50.204, 69.50.205, 69.50.206, 69.50.207, 69.50.208, 69.50.209, 69.50.210, 69.50.211, 69.50.212, 69.50.213, 69.50.301, 69.50.302, 69.50.303, 69.50.304, 69.50.308, and 69.50.403; reenacting and amending RCW 69.50.101; adding new sections to chapter 69.50 RCW; creating a new section; and prescribing penalties.

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

### ARTICLE I—DEFINITIONS

Sec. 1. RCW 69.50.101 and 1990 c 248 s 1, 1990 c 219 s 3, and 1990 c 196 s 8 are each reenacted and amended to read as follows:

DEFINITIONS. ((As)) Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" ~~((means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:~~

(1) ~~a practitioner, or~~) means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public ~~((warehouseman))~~ warehouseperson, or employee of the carrier or ~~((warehouseman))~~ warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act 21 U.S.C. Sec. 355 to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.



(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the ((federal)) drug enforcement administration in the United States Department of Justice, or its successor agency.

~~((d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Article II.~~

~~(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.~~

~~(f) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.~~

~~(g) "Department" means the department of health.~~

~~(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.~~

~~(i) "Dispenser" means a practitioner who dispenses.~~

~~(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.~~

~~(k) "Distributor" means a person who distributes.~~

~~(l) "Receipt" means to receive a controlled substance either with or without consideration.~~

(m) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3)

~~of this subsection. It does not include devices or their components, parts, or accessories.))~~

(n) "Immediate precursor" means a substance (~~(which)~~);

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, ((and which)) in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance((?)); and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

~~((?))~~ (p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container(~~(, except that this)~~). The term does not include the preparation ((?)), compounding, packaging, repackaging, labeling, or relabeling of a controlled substance ((by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance)):

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of ((his or her)) the practitioner's professional practice((?)); or

(2) by a practitioner, or by ((?)) the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~((?))~~ (q) "Marijuana" or "marihuana" means all parts of the plant ((of the genus)) Cannabis (~~(L.)~~), whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. ((?)) The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

~~((?))~~ (r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

~~((1))~~ Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

~~(2)~~ Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

~~(3)~~ Opium poppy and poppy straw.

~~(4)~~ Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.)

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

~~((#))~~ (s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. ((#)) The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). ((#does)) The term includes ((#s)) the racemic and levorotatory forms of dextromethorphan.

~~((#))~~ (t) "Opium poppy" means the plant of the ((genus)) species *Papaver somniferum* L., except its seeds((-capable of producing an opiate)).

~~((#))~~ (u) "Person" means individual, corporation, ((government or governmental subdivision or agency;)) business trust, estate, trust, partnership ((#)), association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~((#))~~ (v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~((w))~~ (w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, ~~((an osteopathic physician or))~~ an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a ~~((chiropractist))~~ podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathy and surgery, a dentist licensed to practice dentistry, a ~~((podiatrist))~~ podiatric physician and surgeon licensed to practice ~~((podiatry))~~ podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

~~((w))~~ (x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the ~~((manufacture))~~ manufacturing, planting, ~~((cultivation))~~ cultivating, growing, or harvesting of a controlled substance.

~~((x))~~ (z) "Secretary" means the secretary of health or the secretary's designee.

~~((y))~~ "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

~~((z))~~ (aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means ~~((a person))~~ an individual who lawfully possesses a controlled substance for ~~((his or her))~~ the individual's own use or for the use of a member of ~~((his or her))~~ the individual's household or for administering to an animal owned by ~~((him or her))~~ the individual or by a member of ~~((his or her))~~ the individual's household.

~~((aa))~~ "Board" means the state board of pharmacy.)

## ARTICLE II—STANDARDS AND SCHEDULES

**Sec. 2.** RCW 69.50.201 and 1989 1st ex.s. c 9 s 430 are each amended to read as follows:

**AUTHORITY TO CONTROL.** (a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule ~~((and))~~ substances ~~((enumerated in the schedules))~~ listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the ~~((rule-making))~~ procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

~~((1))~~ (i) the actual or relative potential for abuse;

~~((2))~~ (ii) the scientific evidence of its pharmacological effect, if known;

~~((3))~~ (iii) the state of current scientific knowledge regarding the substance;

~~((4))~~ (iv) the history and current pattern of abuse;

~~((5))~~ (v) the scope, duration, and significance of abuse;

~~((6))~~ (vi) the risk to the public health;

~~((7))~~ (vii) the potential of the substance to produce psychic or physiological dependence liability; and

~~((8))~~ (viii) whether the substance is an immediate precursor of a ~~((substance already))~~ controlled ~~((under this Article))~~ substance.

~~((b))~~ After considering the factors enumerated in subsection (a) the board may issue a rule controlling the substance if it finds the substance has a potential for abuse.

~~((c))~~ If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

~~((d))~~ If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the substance shall be similarly controlled under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall proceed pursuant to the rule-making procedures of chapter 34.05 RCW.

~~((e))~~ Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 66 RCW and Title 26 RCW.

~~((f))~~ The board shall exclude any nonnarcotic substances from a schedule if such substances may, under the Federal Food, Drug and Cosmetic Act, and under regulations of the drug enforcement administration, and the laws of this state including RCW 18.64.250, be lawfully sold over the counter.)

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

~~((g))~~ (b) On or before December 1 of each year, the board shall inform the committees of reference of the legislature of the controlled substances added, deleted, or changed on the schedules specified in this chapter and which includes an explanation of these actions.

(c) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(d) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (c) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the board designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(e) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rulemaking is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

(f) The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.— (section 14 of

this act), the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1) (iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW.

**Sec. 3.** RCW 69.50.203 and 1971 ex.s. c 308 s 69.50.203 are each amended to read as follows:

SCHEDULE I TESTS. (a) The state board of pharmacy shall place a substance in Schedule I ((if it finds)) upon finding that the substance:

(1) has high potential for abuse; ((and))

(2) has no currently accepted medical use in treatment in the United States ((or)); and

(3) lacks accepted safety for use in treatment under medical supervision.

(b) The board may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

**Sec. 4.** RCW 69.50.204 and 1986 c 124 s 3 are each amended to read as follows:

~~SCHEDULE I. ((a) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.~~

~~(b) Opiates. Unless specifically excepted or unless listed in another schedule, any)) Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:~~

~~(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers((;)) whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:~~

~~(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide;~~

- (2) Acetylmethadol;  
 ((~~2~~)) ~~(1)~~ Alfentanil;
- (3) Allylprodine;  
 (4) Alphacetylmethadol;  
 (5) Alphameprodine;  
 (6) Alphamethadol;  
 (7) Alpha-methylfentanyl (N-[1-alpha-methyl-beta-phenyl] ethyl-4-piperidyl] (~~propionanilide~~) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);  
 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;  
 ((~~9~~)) (10) Betacetylmethadol;  
 ((~~10~~)) (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl-4-piperidinyl]-N-phenylpropanamide));  
 (12) Beta-hydroxy-3-methylfentanyl some trade or other names: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
- (13) Betameprodine;  
 ((~~11~~)) (14) Betamethadol;  
 ((~~12~~)) (15) Betaprodine;  
 ((~~13~~)) (16) Clonitazene;  
 ((~~14~~)) (17) Dextromoramide;  
 ((~~15~~)) (18) Diampromide;  
 ((~~16~~)) (19) Diethylthiambutene;  
 ((~~17~~)) (20) Difenoxin;  
 ((~~18~~)) (21) Dimenoxadol;  
 ((~~19~~)) (22) Dimepheptanol;  
 ((~~20~~)) (23) Dimethylthiambutene;  
 ((~~21~~)) (24) Dioxaphetyl butyrate;  
 ((~~22~~)) (25) Dipipanone;  
 ((~~23~~)) (26) Ethylmethylthiambutene;  
 ((~~24~~)) (27) Etonitazene;  
 ((~~25~~)) (28) Etoxidine;  
 ((~~26~~)) (29) Furethidine;  
 ((~~27~~)) (30) Hydroxypethidine;  
 ((~~28~~)) (31) Ketobemidone;  
 ((~~29~~)) (32) Levomoramide;  
 ((~~30~~)) (33) Levophenacylmorphan;  
 ((~~31~~)) (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylprop anamide);
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;  
 ((~~32~~)) (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);



- ~~((33))~~ (38) Noracymethadol;  
~~((34))~~ (39) Norlevorphanol;  
~~((35))~~ (40) Normethadone;  
~~((36))~~ (41) Norpipanone;  
~~((36))~~ (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide;  
 (43) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);  
 (44) Phenadoxone;  
~~((37))~~ (45) Phenampromide;  
~~((38))~~ (46) Phenomorphan;  
~~((39))~~ (47) Phenoperidine;  
~~((40))~~ (48) Piritramide;  
~~((41-Propheptazine))~~ (49) Proheptazine;  
~~((42))~~ (50) Properidine;  
~~((43))~~ (51) Propiram;  
~~((44))~~ (52) Racemoramide;  
~~((45))~~ (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;  
 (54) Tilidine;  
~~((46))~~ (55) Trimeperidine.

~~((e))~~ (b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers(~~(-)~~) whenever the existence of (~~(these))~~ those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) 3,4-methylenedioxy-N-ethylamphetamine some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(9) N-hydroxy-3,4-methylenedioxyamphetamine some trade or other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

- (10) Dihydromorphine;
- ~~((9))~~ (11) Drotribanol;
- ~~((10))~~ (12) Etorphine(~~(f))~~<sub>1</sub> except hydrochloride salt(~~(g))~~);
- ~~((11))~~ (13) Heroin;
- ~~((12))~~ (14) Hydromorphanol;
- ~~((13))~~ (15) Methyl-desorphine;
- ~~((14))~~ (16) Methyl-dihydromorphine;

- ~~((15))~~ (17) Morphine methylbromide;
- ~~((16))~~ (18) Morphine methylsulfonate;
- ~~((17))~~ (19) Morphine-N-Oxide;
- ~~((18))~~ (20) Myrophine;
- ~~((19))~~ (21) Nicocodeine;
- ~~((20))~~ (22) Nicomorphine;
- ~~((21))~~ (23) Normorphine;
- ~~((22))~~ (24) Pholcodine;
- ~~((23))~~ (25) Thebacon.

~~((d))~~ (c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, ~~((or which contains any of its))~~ including their salts, isomers, and salts of isomers~~((;))~~ whenever the existence of ~~((such))~~ those salts, isomers, and salts of isomers is possible within the specific chemical designation ~~((For purposes of paragraph (d) of this section, only, the term "isomer" includes the optical, position, and geometric isomers.))~~:

- (1) 3,4 methylenedioxy amphetamine;
- (2) 5 methoxy 3,4 methylenedioxy amphetamine;
- (3) 3,4,5 trimethoxy amphetamine;
- (4) 4 bromo 2,5 dimethoxy amphetamine: Some trade or other names: 4 bromo 2,5 dimethoxy alpha methylphenethylamine; 4 bromo 2,5-DMA;
- (5) 2,5 dimethoxyamphetamine: Some trade or other names: 2,5 dimethoxy alpha methylphenethylamine; 2,5-DMA;
- (6) 4 methoxyamphetamine: Some trade or other names: 4 methoxy alpha methylphenethylamine; paramethoxyamphetamine; PMA;
- (7) 4 methyl 2,5 dimethoxyamphetamine: Some trade or other names: 4 methyl 2,5 dimethoxy alpha methylphenethylamine; "DOM"; "STP";
- (8) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;
- (9) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;
- (10) Dimethyltryptamine: Some trade or other names: DMT;
- (11) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13, octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2'-1,2) azepino (5,4-b) indole; Tabernanthe iboga;
- (12) Lysergie acid diethylamide;
- (13) Marihuana;
- (14) Mescaline;
- (15) Parahexyl 7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;
- (16) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof;

any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts (interprets 21 U.S.C. Sec. 812(e), Schedule I(c)(12));

(17) N-ethyl-3-piperidyl-benzilate;

(18) N-methyl-3-piperidyl-benzilate;

(19) Psilocybin;

(20) Psilocyn;

(21) ~~Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, specifically, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:~~

(i) ~~Delta 1-cis- or trans-tetrahydrocannabinol, and their optical isomers;~~

(ii) ~~Delta 6-cis- or trans-tetrahydrocannabinol, and their optical isomers;~~

(iii) ~~Delta 3,4-cis- or trans-tetrahydrocannabinol, and its optical isomers;~~

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are all included.)

(22) ~~Ethylamine analog of phenethylidine: Some trade or other names: N-ethyl-1-phenylethylamine, (1-phenylethyl)-ethylamine; N-(1-phenylethyl)ethylamine; cyclohexamine; PCE;~~

(23) ~~Pyrrolidine analog of phenethylidine: Some trade or other names: 1-(1-phenylethyl)pyrrolidine; PCPy; PHP;~~

(24) ~~Thiophene analog of phenethylidine: Some trade or other names: 1-(1-{2-thenyl}-cyclohexyl)-piperidine; 2-thienylanalog of phenethylidine; TPCP; TCP).~~

~~((e) Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of mecloqualone having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:~~

~~(1) Mecloqualone;~~

~~(2) Methaqualone.~~

~~(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:~~

~~(1) Fenethyline;~~

~~(2) N-ethylamphetamine;~~

~~(3) 3-methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers;~~

~~(4) 3,4-methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;~~

~~(5) 1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP), its optical isomers, salts, and salts of isomers;~~

(6) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP, its optical isomers, salts and salts of isomers)) (1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;

(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4-methylenedioxymethamphetamine (MDMA);

(8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9methano-5H-pyndo (1',2' 1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) Marihuana or marijuana;

(15) Mescaline;

(16) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(17) Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812 (c), Schedule I (c)(12))

(18) N-ethyl-3-piperidyl benzilate;

(19) N-methyl-3-piperidyl benzilate;

(20) Psilocybin;

(21) Psilocyn;

(22) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin

capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or trans tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or trans tetrahydrocannabinol, and its optical isomers; (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(24) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(25) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-phenyl]-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TCP; TCP;

(26) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Mecloqualone.

(2) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylamine;

(2) (+)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(3) N-ethylamphetamine;

(4) N,N-dimethylamphetamine: some trade or other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenoethylene.

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

Sec. 5. RCW 69.50.205 and 1971 ex.s. c 308 s 69.50.205 are each amended to read as follows:

SCHEDULE II TESTS. (a) The state board of pharmacy shall place a substance in Schedule II ((if it finds)) upon finding that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe ((psychic)) psychological or physical dependence.

(b) The state board of pharmacy may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

Sec. 6. RCW 69.50.206 and 1986 c 124 s 4 are each amended to read as follows:

SCHEDULE II. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid (~~(extracts)~~);
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof (~~(which)~~) that is chemically equivalent or identical with any of the substances referred to in (~~(paragraph)~~) subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these

substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Methylbenzoylecgonine (cocaine — its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the (~~phenanthrine~~) phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- ~~((2))~~ (3) Anileridine;
- ~~((3))~~ (4) Bezitramide;
- ~~((4))~~ (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- ~~((5))~~ (7) Dihydrocodeine;
- ~~((6))~~ (8) Diphenoxylate;
- ~~((7))~~ (9) Fentanyl;
- ~~((8))~~ (10) Isomethadone;
- ~~((9))~~ (11) Levomethorphan;
- ~~((10))~~ (12) Levorphanol;
- ~~((11))~~ (13) Metazocine;
- ~~((12))~~ (14) Methadone;
- ~~((13))~~ (15) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- ~~((14))~~ (16) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- ~~((15))~~ (17) Pethidine (~~(meperidene))~~ (meperidine);
- ~~((16))~~ (18) Pethidine—Intermediate((-)A, 4-cyano-1-methyl-4-phenylpiperidine;
- ~~((17))~~ (19) Pethidine—Intermediate((-)B, ethyl-4-phenylpiperidine-4-carboxylate;
- ~~((18))~~ (20) Pethidine—Intermediate((-)C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- ~~((19))~~ (21) Phenazocine;
- ~~((20))~~ (22) Piminodine;
- ~~((21))~~ (23) Racemethorphan;
- ~~((22))~~ (24) Racemorphan;
- ~~((23))~~ (25) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any

quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, its salts, isomers, and salts of its isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- ~~((3))~~ (4) Phencyclidine;
- ~~((4))~~ (5) Secobarbital.
- (f) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)

(2) Nabilone: Some trade or other names are ( ± )-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
  - ~~((2))~~ (i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.
  - ~~((3))~~ (2) Immediate precursors to phencyclidine (PCP):
    - (i) 1-phenylcyclohexylamine;
    - (ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

Sec. 7. RCW 69.50.207 and 1971 ex.s. c 308 s 69.50.207 are each amended to read as follows:

SCHEDULE III TESTS. (a) The state board of pharmacy shall place a substance in Schedule III (~~(if it finds)~~) upon finding that:

(1) the substance has a potential for abuse less than the substances (~~(listed)~~) included in Schedules I and II;



(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The state board of pharmacy may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

**Sec. 8.** RCW 69.50.208 and 1986 c 124 s 5 are each amended to read as follows:

~~SCHEDULE III. ((a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule III.~~

~~(b) Stimulants. Unless specifically excepted or unless listed in another schedule,))~~ Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule III:

(a) Any material, compound, mixture, or preparation ((which contains)) containing any quantity of the following substances having a stimulant effect on the central nervous system, including ((its)) their salts, isomers ((whether optical, position, or geometric)), and salts of ((such)) isomers whenever the existence of ((such)) those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) ((Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations are referred to as excepted compounds in Schedule III as published in 21 CFR 1308.13(b)(1) as of April 1, 1985, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances)) Any compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal controlled substances act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

~~((e))~~ (b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

- (4) Chlorhexadol;
- (5) (~~Glutethimide~~);
- (~~6~~) Lysergic acid;
- (~~7~~) (6) Lysergic acid amide;
- (~~8~~) (7) Methyprylon;
- (~~9~~) (8) Sulfondiethylmethane;
- (~~10~~) (9) Sulfonethylmethane;
- (~~11~~) (10) Sulfonmethane;

(11) Tiletamine and zolazepam or any of their salts—some trade or other names for a tiletamine-zolazepam combination product: Telazol some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone—some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]- diazepin-7(1H)-one flupyrzapon.

(~~d~~) (c) Nalorphine.

(d) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone;
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone;
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;

- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nanrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in ~~((paragraph (e) of this section))~~ this subsection:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (a)(1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

Sec. 9. RCW 69.50.209 and 1971 ex.s. c 308 s 69.50.209 are each amended to read as follows:

SCHEDULE IV TESTS. (a) The state board of pharmacy shall place a substance in Schedule IV ~~((if it finds))~~ upon finding that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III.

(b) The state board of pharmacy may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

Sec. 10. RCW 69.50.210 and 1986 c 124 s 6 are each amended to read as follows:

~~SCHEDULE IV. ((a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule IV.~~

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule,)) Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-+)((-e))-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

((e)) (b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation ((which contains)) containing any quantity of the following substances having a depressant effect on the central nervous system, including ((its)) their salts, isomers, and salts of isomers whenever the existence of ((such)) those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- ~~((1))~~ Alprazolam;
- ~~(2)~~ Barbital;
- ~~(3)~~ Chloral betaine;
- ~~(4)~~ Chloral hydrate;
- ~~(5)~~ Chlordiazepoxide;
- ~~(6)~~ Clonazepam;
- ~~(7)~~ Clorazepate;
- ~~(8)~~ Diazepam;
- ~~(9)~~ Ethchlorvynol;
- ~~(10)~~ Ethinamate;
- ~~(11)~~ Flurazepam;
- ~~(12)~~ Halazepam;
- ~~(13)~~ Lorazepam;
- ~~(14)~~ Mebutamate;
- ~~(15)~~ Meprobamate;
- ~~(16)~~ Methohexital;
- ~~(17)~~ Methylphenobarbital-(mephobarbital);
- ~~(18)~~ Oxazepam;
- ~~(19)~~ Paraldehyde;
- ~~(20)~~ Petrichloral;
- ~~(21)~~ Phenobarbital;
- ~~(22)~~ Prazepam;
- ~~(23)~~ Temazepam;
- ~~(24)~~ Triazolam.
- ~~(d)~~ Fenfluramine.))
- (1) Alprazolam;
- (2) Barbital;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;

- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Estazolam;
- (16) Ethchlorvynol;
- (17) Ethinamate;
- (18) Ethyl loflazepate;
- (19) Fludiazepam;
- (20) Flunitrazepam;
- (21) Flurazepam;
- (22) Halazepam;
- (23) Haloxazolam;
- (24) Ketazolam;
- (25) Loprazolam;
- (26) Lorazepam;
- (27) Lormetazepam;
- (28) Mebutamate;
- (29) Medazepam;
- (30) Meprobamate;
- (31) Methohexital;
- (32) Methylphenobarbital (mephobarbital);
- (33) Midazolam;
- (34) Nimetazepam;
- (35) Nitrazepam;
- (36) Nordiazepam;
- (37) Oxazepam;
- (38) Oxazolam;
- (39) Paraldehyde;
- (40) Petrichloral;
- (41) Phenobarbital;
- (42) Pinazepam;
- (43) Prazepam;
- (44) Quazepam;
- (45) Temazepam;
- (46) Tetrazepam;
- (47) Triazolam.

(c) Any material, compound, mixture, or preparation ((~~which contains~~) containing any quantity of the following substance(s)), including its salts, isomers ((~~whether optical, position, or geometric~~)), and salts of such isomers,

whenever the existence of such salts, isomers, and salts of isomers is possible((-):

~~((+))~~ Fenfluramine.

~~((e))~~ (d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation (~~which contains~~) containing any quantity of the following substances having a stimulant effect on the central nervous system, including ~~(its)~~ their salts, isomers (~~(whether optical, position, or geometric)~~), and salts of ~~(such)~~ isomers (~~whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation~~):

(1) Cathine(+) norpseudoephedrine;

(2) Diethylpropion;

~~((2))~~ (3) Fencamfamin;

(4) Fenproporex;

(5) Mazindol;

~~((3))~~ (6) Mefenorex;

(7) Pemoline (including organometallic complexes and chelates thereof);

~~((4))~~ (8) Phentermine;

~~((5))~~ (9) Pipradrol;

~~((6))~~ (10) SPA (-)-1-dimethylamino-1, 2-diphenylethane.

~~((f))~~ (e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation (~~which contains~~) containing any quantity of the following substance(s), including its salts: (1) Pentazocine.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

**Sec. 11.** RCW 69.50.211 and 1971 ex.s. c 308 s 69.50.211 are each amended to read as follows:

**SCHEDULE V TESTS.** (a) The state board of pharmacy shall place a substance in Schedule V (~~if it finds~~) upon finding that:

(1) the substance has low potential for abuse relative to the controlled substances (~~listed~~) included in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance ((has)) may lead to limited physical dependence or psychological dependence ((liability)) relative to the ((controlled)) substances ((listed)) included in Schedule IV.

(b) The state board of pharmacy may place a substance in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is controlled under Schedule V of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

Sec. 12. RCW 69.50.212 and 1986 c 124 s 7 are each amended to read as follows:

~~SCHEDULE V. ((a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule V.~~

~~(b) Narcotic drugs containing nonnarcotic active medicinal ingredients-))~~  
Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule V:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this ((section)) subsection, which ((shall include)) also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit((;

~~(c) Buprenorphine)).~~

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

Pyrovalerone.



The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

**Sec. 13.** RCW 69.50.213 and 1971 ex.s. c 308 s 69.50.213 are each amended to read as follows:

**REPUBLISHING OF SCHEDULES.** ~~The state board of pharmacy shall ((at least semiannually for two years from May 21, 1971 and thereafter annually consider the revision of the schedules published pursuant to chapter 34.05 RCW))~~ publish updated schedules annually. Failure to publish updated schedules is not a defense in any administrative or judicial proceeding under this chapter.

**NEW SECTION. Sec. 14.** A new section is added to chapter 69.50 RCW to read as follows:

**CONTROLLED SUBSTANCE ANALOG TREATED AS SCHEDULE I SUBSTANCE.** A controlled substance analog, to the extent intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in Schedule I. Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the state board of pharmacy of information relevant to emergency scheduling as provided for in RCW 69.50.201(f). After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may continue or take place.

**Sec. 15.** RCW 69.50.301 and 1991 c 229 s 9 are each amended to read as follows:

**RULES.** ~~The ((state)) board ((of pharmacy)) may ((promulgate))~~ adopt rules and ~~((the secretary may set fees in accordance with RCW 43.70.250))~~ the department may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

**Sec. 16.** RCW 69.50.302 and 1989 1st ex.s. c 9 s 432 are each amended to read as follows:

**REGISTRATION REQUIREMENTS.** (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, ~~((must))~~ shall obtain annually a registration issued by the department in accordance with the board's rules.

(b) A ~~person((s))~~ registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by ~~((their))~~ the registration and in conformity with ~~((the other provisions of))~~ this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if ~~((he))~~ the agent or employee is acting in the usual course of ~~((his))~~ business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V ~~((substance))~~.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers ~~((if it finds))~~ upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the ~~((board's rule))~~ board.

**Sec. 17.** RCW 69.50.303 and 1989 1st ex.s. c 9 s 433 are each amended to read as follows:

**REGISTRATION.** (a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(2) compliance with applicable state and local law;

(3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(4) any convictions of the applicant under any laws of another country or federal ~~((and))~~ or state laws relating to any controlled substance;

~~((4))~~ (5) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

~~((5))~~ (6) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

~~((6))~~ (7) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

~~((7))~~ (8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture ~~(and)~~ or distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances included in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic ~~((controlled))~~ substances included in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with substances included in Schedule I ~~((substances))~~ may conduct research with substances included in Schedule I ~~((substances))~~ within this state upon furnishing the board evidence of that federal registration.

~~(d) ((Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter upon application and payment of the required fee))~~ A manufacturer or distributor registered under the federal Controlled Substances Act 21 U.S.C. Sec. 801 et seq. may submit a copy of the federal application as an application for registration as a manufacturer or distributor under this section. The board may require a manufacturer or distributor to submit information in addition to the application for registration under the federal act.

Sec. 18. RCW 69.50.304 and 1989 1st ex.s. c 9 s 434 are each amended to read as follows:

REVOCATION AND SUSPENSION OF REGISTRATION. (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon ~~((a))~~ finding that the registrant has:

(1) ~~((has))~~ furnished false or fraudulent material information in any application filed under this chapter;

(2) ~~((has))~~ been ~~((found guilty))~~ convicted of a felony under any state or federal law relating to any controlled substance;

(3) ~~((has))~~ had ~~((his))~~ the registrant's federal registration suspended or revoked and is no longer authorized by federal law to manufacture, distribute, or dispense controlled substances; or

(4) ~~((has violated any state or federal rule or regulation regarding controlled substances))~~ committed acts that would render registration under RCW 69.50.303 inconsistent with the public interest as determined under that section.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application (~~therefor~~), orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. The department shall notify a registrant, or the registrant's successor in interest, who has any controlled substance seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The department may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred eighty days after the controlled substance was seized or placed under seal. The costs incurred by the department in seizing, placing under seal, maintaining custody, and disposing of any controlled substance under this subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. Any balance remaining after the costs have been recovered from the proceeds of any disposition must be delivered to the registrant or the registrant's successor in interest.

(e) The department shall promptly notify the drug enforcement administration of all orders restricting, suspending, or revoking registration and all forfeitures of controlled substances.

**Sec. 19.** RCW 69.50.308 and 1971 ex.s. c 308 s 69.50.308 are each amended to read as follows:

**PRESCRIPTIONS.** (a) A controlled substance may be dispensed only as provided in this section.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, ((no controlled)) a substance included in Schedule II may not be dispensed without the written prescription of a practitioner.

~~((b))~~ (c) In emergency situations, as defined by rule of the state board of pharmacy, a substance included in Schedule II ((drugs)) may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements

of RCW 69.50.306. ~~((N))~~ A prescription for a substance included in Schedule II ((substance)) may not be refilled.

~~((e))~~ (d) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a ((controlled)) substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, ((shall)) may not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

~~((d))~~ (e) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that ((he)) the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

~~((e) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.))~~

(f) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

(g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

(h) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(i) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use.

NEW SECTION. Sec. 20. A new section is added to chapter 69.50 RCW to read as follows:

DIVERSION PREVENTION AND CONTROL. (a) As used in this section, "diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(b) The department shall regularly prepare and make available to other state regulatory, licensing, and law enforcement agencies a report on the patterns and trends of actual distribution, diversion, and abuse of controlled substances.

(c) The department shall enter into written agreements with local, state, and federal agencies for the purpose of improving identification of sources of diversion and to improve enforcement of and compliance with this chapter and

other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent, and control drug diversion and drug abuse. The department shall convene periodic meetings to coordinate a state diversion prevention and control program. The department shall arrange for cooperation and exchange of information among agencies and with neighboring states and the federal government.

(d) The department shall report to the governor and to the presiding officer of each house of the legislature on the outcome of this program with respect to its effects on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances of this state.

#### ARTICLE IV OFFENSES AND PENALTIES

**Sec. 21.** RCW 69.50.403 and 1971 ex.s. c 308 s 69.50.403 are each amended to read as follows:

**PROHIBITED ACTS: C—PENALTIES.** (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by RCW 69.50.307;

(2) To use in the course of the manufacture ~~((or))~~, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address.

(4) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

(5) To make or utter any false or forged prescription or false or forged written order.

(6) To affix any false or forged label to a package or receptacle containing controlled substances.

(7) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(8) ~~((To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other~~

~~identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.)~~ To possess a false or fraudulent prescription with intent to obtain a controlled substance.

(b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(c) ~~((Any))~~ A person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both.

NEW SECTION. Sec. 22. A new section is added to chapter 69.50 RCW to read as follows:

**COUNTERFEIT SUBSTANCES PROHIBITED—PENALTY.** (a) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

(b) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

(c) A person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both.

NEW SECTION. Sec. 23 **CAPTIONS NOT LAW.** Section captions as used in this act constitute no part of the law.

Passed the Senate March 11, 1993.

Passed the House April 15, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

## CHAPTER 188

[Substitute Senate Bill 5878]

## COMMUNITY AND TECHNICAL COLLEGE FACULTY—POSTTENURE REVIEW

Effective Date: 7/1/93

AN ACT Relating to tenure; amending RCW 28B.50.869; reenacting and amending RCW 28B.50.851; adding a new section to chapter 28B.50 RCW; creating a new section; repealing RCW 28B.50.858; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 28B.50.851 and 1991 c 294 s 2 and 1991 c 238 s 68 are each reenacted and amended to read as follows:

As used in RCW 28B.50.850 through 28B.50.869:

(1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process;

(2)(a) "Faculty appointment", except as otherwise provided in (b) of this subsection, shall mean full time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department heads, division heads and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor, or librarian; faculty appointment shall also mean employment on a reduced work load basis when a faculty member has retained tenure under RCW 28B.50.859;

(b) "Faculty appointment" shall not mean special faculty appointment as a teacher, counselor, librarian, or other position as enumerated in (a) of this subsection, when such employment results from special funds provided to a community college district from federal moneys or other special funds which other funds are designated as "special funds" by the college board: PROVIDED, That such "special funds" so designated by the college board for purposes of this section shall apply only to teachers, counselors and librarians hired from grants and service agreements and teachers, counselors and librarians hired in nonformula positions. A special faculty appointment resulting from such special financing may be terminated upon a reduction or elimination of funding or a reduction or elimination of program: PROVIDED FURTHER, That "faculty appointees" holding faculty appointments pursuant to subsections (1) or (2)(a) of this section who have been subsequently transferred to positions financed from "special funds" pursuant to (b) of this subsection and who thereafter lose their positions upon reduction or elimination of such "special funding" shall be entitled to be returned to previous status as faculty appointees pursuant to subsection (1) or (2)(a) of this section depending upon their status prior to the "special funding" transfer. Notwithstanding the fact that tenure shall not be granted to anyone holding a special faculty appointment, the termination of any such faculty appointment prior to the expiration of the term of such faculty member's individual contract for any cause which is not related to elimination or reduction



of financing or the elimination or reduction of program shall be considered a termination for cause subject to the provisions of this chapter;

(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's terms of employment;

(4) "Probationer" shall mean an individual holding a probationary faculty appointment;

(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority;

(6) "Appointing authority" shall mean the board of trustees of a college district;

(7) "Review committee" shall mean a committee composed of the probationer's faculty peers (~~(or tenured faculty member's peers)~~), a student representative, and the administrative staff of the community or technical college: PROVIDED, That the majority of the committee shall consist of the probationer's faculty peers (~~(or tenured faculty member's peers)~~).

**Sec. 2.** RCW 28B.50.869 and 1991 c 238 s 70 are each amended to read as follows:

The review committees required by RCW 28B.50.850 through 28B.50.869 shall be composed of members of the administrative staff, a student representative, and the ~~((teaching))~~ faculty. The representatives of the ~~((teaching))~~ faculty shall represent a majority of the members on each review committee. The members representing the ~~((teaching))~~ faculty on each review committee shall be selected by a majority of the ~~((teaching))~~ faculty and faculty department heads acting in a body. The student representative, who shall be a full time student, shall be chosen by the student association of the particular community or technical college in such manner as the members thereof shall determine.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 28B.50 RCW to read as follows:

By June 30, 1994, each community and technical college shall establish, through the local collective bargaining process, periodic posttenure evaluation of all full-time faculty consistent with the standards of the Northwest association of schools and colleges.

**NEW SECTION.** **Sec. 4.** RCW 28B.50.858 and 1991 c 294 s 5 are each repealed.

**NEW SECTION.** **Sec. 5.** Nothing contained in this act shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

**NEW SECTION.** **Sec. 6.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

NEW SECTION. Sec. 7. 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 Senate March 11, 1993.  
Passed the House April 15, 1993.  
Approved by the Governor April 30, 1993.  
Filed in Office of Secretary of State April 30, 1993.

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**CHAPTER 189**

[Substitute House Bill 1156]

**TRANSFER OF SHERIFF'S OFFICE EMPLOYEES TO CITY POLICE  
DEPARTMENT UPON ANNEXATION OR INCORPORATION**

**Effective Date: 7/25/93**

AN ACT Relating to transfer of county sheriff's office employees; amending RCW 41.12.050; and adding new sections to chapter 35.13 RCW.

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

**Sec. 1.** RCW 41.12.050 and 1987 c 339 s 2 are each amended to read as follows:

The classified civil service and provisions of this chapter shall include all full paid employees of the police department of each city, town or municipality coming within its purview, except that individuals appointed as police chief after July 1, 1987, to a department with six or more commissioned officers, including the police chief, may be excluded by the legislative body of the city, town or municipality. All appointments to and promotions in ~~((said))~~ the department shall be made solely on merit, efficiency and fitness except as provided in sections 2 through 6 of this act, which shall be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in or transferred, suspended or discharged from any such place, position or employment contrary to the provisions of this chapter.

NEW SECTION. **Sec. 2.** It is the purpose of sections 2 through 6 of this act to require the lateral transfer of any qualified county sheriff's employee who, by reason of annexation or incorporation of an unincorporated area of a county, will or is likely to be laid off due to sheriff's department cutbacks resulting from the loss of the unincorporated law enforcement responsibility.

NEW SECTION. **Sec. 3.** When any portion of an unincorporated area of a county is to be annexed or incorporated into a city, code city, or town, any employee of the sheriff's office of the county may transfer his or her employment to the police department of the city, code city, or town as provided in sections 2 through 6 of this act if the employee: (1) Was, at the time the annexation or incorporation occurred, employed exclusively or principally in performing the powers, duties, and functions of the county sheriff's office; (2)

will, as a direct consequence of the annexation or incorporation, be separated from the employ of the county; and (3) can perform the duties and meets the city's, code city's or town's minimum standards and qualifications of the position to be filled within their police department.

Nothing in this section or sections 4 of this act requires a city, code city, or town to accept the voluntary transfer of employment of a person who will not be laid off due to his or her seniority status.

**NEW SECTION.** **Sec. 4.** (1) An eligible employee under section 3 of this act may transfer into the civil service system for the police department by filing a written request with the civil service commission of the affected city, code city, or town and by giving written notice thereof to the legislative authority of the county. Upon receipt of such request by the civil service commission the transfer shall be made. The employee so transferring will: (a) Be on probation for the same period as are new employees in the same classification of the police department; (b) be eligible for promotion after completion of the probationary period in compliance with existing civil service rules pertaining to lateral transfers based upon combined service time; (c) receive a salary at least equal to that of other new employees in the same classification of the police department; and (d) in all other matters, such as sick leave and vacation, have, within the civil service system, all the rights, benefits, and privileges that the employee would have been entitled to had he or she been a member of the police department from the beginning of his or her employment with the county. The county is responsible for compensating an employee for benefits accrued while employed with the sheriff's office unless a different agreement is reached between the county and the city, code city, or town. No accrued benefits are transferable to the recipient agency unless the recipient agency agrees to accept the accrued benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency. The county shall, upon receipt of such notice, transmit to the civil service commission a record of the employee's service with the county which shall be credited to the employee as a part of his or her period of employment in the police department. For purposes of layoffs by the city, code city, or town, only the time of service accrued with the city, code city, or town shall apply unless an agreement is reached between the collective bargaining representatives of the police department and sheriff's office employees and the police department and sheriff's office.

(2) Only as many of the transferring employees shall be placed upon the payroll of the police department as the city, code city, or town determines are needed to provide an adequate level of law enforcement service. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in sections 2 through 6 of this act shall head the list of their respective class or job listing exclusive of rank in the civil service system in order of their seniority, so that they shall be the first to be employed in the police department as vacancies become available. Employees who are not immediately hired by the city, code city, or town shall be placed on a reemploy-

ment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the police department and sheriff's office employees and the police department and sheriff's office. The county sheriff's office must rehire former employees who are placed on the city's reemployment list before it can hire anyone else to perform the same duties previously performed by these employees who were laid off.

(3) The thirty-six month period contained in subsection (2) of this section shall commence:

(a) On the effective date of the annexation in cases of annexation; and

(b) On the date when the city creates its own police department in cases of incorporation.

(4) The city, code city, or town shall retain the right to select the police chief regardless of seniority.

**NEW SECTION.** Sec. 5. In addition to its other duties prescribed by law, the civil service commission shall make rules necessary to provide for the orderly integration of employees of a county sheriff's office to the police department of the city, code city, or town pursuant to sections 2 through 6 of this act.

**NEW SECTION.** Sec. 6. When any portion of an unincorporated area of a county is to be annexed or incorporated into a city, code city, or town and layoffs will result in the county sheriff's office, employees so affected shall be notified of their right to transfer. The affected employees shall have ninety days after the commencement of the thirty-six month period as specified in section 4(3) of this act to file a request to transfer their employment to the police department of the city, code city, or town under sections 2 through 6 of this act.

**NEW SECTION.** Sec. 7. Sections 2 through 6 of this act are each added to chapter 35.13 RCW.

Passed the House March 15, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 190

[House Bill 1225]

DEBT COLLECTION BY CONSUMER LOAN COMPANIES—COSTS OF  
COLLECTION MAY BE COLLECTED FROM DEBTOR

Effective Date: 7/25/93

AN ACT Relating to the collection of allowable fees in connection with delinquent debts, repossessions, and foreclosures; and amending RCW 31.04.105.

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

**Sec. 1.** RCW 31.04.105 and 1991 c 208 s 11 are each amended to read as follows:

Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees for title insurance, appraisals, recording, reconveyance, and releasing when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

(5) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(6) Make open-end loans as provided in this chapter;

~~((6))~~ (7) Charge and collect a fee for dishonored checks in an amount approved by the supervisor; and

~~((7))~~ (8) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

Passed the House February 17, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

CHAPTER 191

[House Bill 1328]

MINIMUM RATE OF COMPENSATION FOR SALESPeOPLE

Effective Date: 7/25/93

AN ACT Relating to the minimum rate of compensation for salespeople of recreational vessels and trailers, recreational vehicle trailers and campers, and manufactured housing; and amending RCW 49.46.130.

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

**Sec. 1.** RCW 49.46.130 and 1992 c 94 s 1 are each amended to read as follows:

(1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

- (a) Any person exempted pursuant to RCW 49.46.010(5);
- (b) Employees who request compensating time off in lieu of overtime pay;
- (c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in

connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259).

(3) No employer of commissioned salespeople primarily engaged in the business of selling automobiles (~~and~~), trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, or manufactured housing to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(4) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed.

Passed the House March 8, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 192

[House Bill 1757]

## CERTIFIED ELECTRICIANS—CONTINUING EDUCATION REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to continuing education requirements for electricians; and amending RCW 19.28.550.

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

**Sec. 1.** RCW 19.28.550 and 1986 c 156 s 14 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.540, and who have complied with RCW 19.28.510 through 19.28.620 and the rules adopted under this chapter. The certificate shall bear the date of issuance, and shall expire on ~~((the holder's birthdate two))~~ October 31st or April 30th, not less than six months nor more than three years immediately following the date of issuance. The certificate shall be renewed every ~~((two))~~ three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a journeyman electrician or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work.



Passed the House March 16, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor May 6, 1993.  
Filed in Office of Secretary of State May 6, 1993.

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**CHAPTER 193**

[House Bill 1773]

**MINIATURE BOILERS EXEMPTED FROM BOILER REGULATIONS**

**Effective Date:** 7/25/93

AN ACT Relating to exemptions from boiler regulations; and amending RCW 70.79.070.

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

**Sec. 1.** RCW 70.79.070 and 1951 c 32 s 7 are each amended to read as follows:

(1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) A special permit may also be granted for miniature boilers manufactured before January 1, 1995, which do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter, which do not exceed any of the following limits:

- (a) Sixteen inches inside diameter of the shell;
- (b) Twenty square feet of total heating surface;
- (c) Five cubic feet of gross volume of vessel; and
- (d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe.

Passed the House March 8, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 194

[Substitute House Bill 1778]

### STATE EMPLOYEE CHILD CARE PROGRAMS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to state employee child care; amending RCW 41.04.370, 41.04.375, 41.04.380, 41.04.385, 43.88.160, and 74.13.090; and adding a new section to chapter 41.04 RCW.

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

**Sec. 1.** RCW 41.04.370 and 1984 c 162 s 1 are each amended to read as follows:

The legislature recognizes that ~~((on-site))~~ supporting child ~~((day))~~ care for employees of public and private organizations is a worthwhile pursuit. To further the goals of affordable, accessible, and quality child care for working parents, the legislature intends to ~~((establish a))~~ provide for the development of self-supporting child care ~~((demonstration project))~~ programs for employees of state government. ~~((The legislature recognizes that appropriate child day care services may enhance productivity and lower absenteeism among state employees.))~~

**Sec. 2.** RCW 41.04.375 and 1984 c 162 s 2 are each amended to read as follows:

An agency may identify space they wish to use for child care facilities or they may request assistance from the department of general administration ~~((shall identify an amount of))~~ in identifying the availability of suitable space in state-owned or state-leased buildings ~~((in the Olympia area))~~ for use as child ~~((day))~~ care centers for the children of state employees.

When suitable space is identified in state-owned or state-leased buildings, the department of general administration shall establish a ~~((fair))~~ rental rate for ~~((the))~~ organizations to pay for the space used by persons who are not state employees.

**Sec. 3.** RCW 41.04.380 and 1984 c 162 s 3 are each amended to read as follows:

~~((1) The department of personnel shall conduct a needs assessment to determine the need for and interest in child day care facilities for the children of state employees;~~

~~((2) The department of personnel shall determine the number of children which may participate in the demonstration project required under RCW 41.04.370 through 41.04.380; and~~

~~(3) If the~~) When suitable space is determined to be available, ~~((the department of personnel shall))~~ either agencies or organizations of state employees may contract with one or more ((organizations)) providers to operate child ((day)) care facilities ((for the children identified under this section. Such facilities may be located in one or more buildings as identified under RCW 41.04.375)).

Subject to the approval of the director of financial management, suitable space for child care centers may be provided to organizations of state employees without charge or at reduced charge for rent or services solely for the purpose of reducing employee child care costs.

NEW SECTION. **Sec. 4.** A new section is added to chapter 41.04 RCW to read as follows:

In order to qualify for services under RCW 41.04.380, state employee child care organizations shall be organized as nonprofit under chapter 24.03 RCW.

**Sec. 5.** RCW 41.04.385 and 1986 c 135 s 1 are each amended to read as follows:

The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child ~~((day))~~ care in the state of Washington; (2) working parents and their children benefit when the employees' child care needs have been resolved; ~~((and))~~ (3) the state of Washington should serve as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child ~~((day))~~ care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child ~~((day))~~ care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child ~~((day))~~ care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of personnel in consultation with the child care coordinating committee, as provided in RCW 74.13.090 and state employee representatives as provided under RCW 41.06.140.

**Sec. 6.** RCW 43.88.160 and 1992 c 118 s 8 are each amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in

addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) The director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date. The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials;

and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(b) Establish policies for allowing the contracting of child care services;

(c) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

~~((e))~~ (d) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter said plans, except that for the following agencies no amendment or alteration of said plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

~~((d))~~ (e) Fix the number and classes of positions or authorized man years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix said number or said classes for the following: Agencies headed by elective officials;

~~((e))~~ (f) Provide for transfers and repayments between the budget stabilization account and the general fund as directed by appropriation and RCW 43.88.525 through 43.88.540;

~~((f) Promulgate regulations)~~ (g) Adopt rules to effectuate provisions contained in (a) through ~~((e))~~ (f) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Disburse public funds under the treasurer's supervision or custody by warrant or check;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to issue any warrant or check for public funds in the treasury except upon forms duly prescribed by the director of financial management. Said forms shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of

payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect and copies thereof are on file with the office of financial management; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made(~~(--PROVIDED, That))~~. When services are lawfully paid for in advance of full performance by any private individual or business entity other than as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services(~~(--AND PROVIDED FURTHER, That))~~. No payments shall be made in advance for any equipment maintenance services to be performed more than three months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official or employee charged with the receipt, custody or safekeeping of public funds. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include at least the following:

Determinations as to whether agencies, in making expenditures, complied with the laws of this state(~~(--PROVIDED, That))~~. Nothing in this section may be construed to grant the state auditor the right to perform performance audits. A performance audit for the purpose of this section is the examination of the effectiveness of the administration, its efficiency, and its adequacy in terms of the programs of departments or agencies as previously approved by the legislature. The authority and responsibility to conduct such an examination shall be vested in the legislative budget committee as prescribed in RCW 44.28.085.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken promptly, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110.

(e) Promptly report any irregularities to the attorney general.

(f) Investigate improper governmental activity under chapter 42.40 RCW.

(7) The legislative budget committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in RCW 44.28.085. To this end the committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs and generally for an improved level of fiscal management.

**Sec. 7.** RCW 74.13.090 and 1989 c 381 s 3 are each amended to read as follows:

(1) There is established a child care coordinating committee to provide coordination and communication between state agencies responsible for child care and early childhood education services. The child care coordinating committee shall be composed of not less than seventeen nor more than thirty-three members who shall include:

(a) One representative each from the department of social and health services, the department of community development, the office of the superintendent of public instruction, and any other agency having responsibility for regulation, provision, or funding of child care services in the state;

(b) One representative from the department of labor and industries;

(c) One representative from the department of trade and economic development;

(d) One representative from the department of revenue;

(e) One representative from the employment security department;

(f) One representative from the department of personnel;

(g) One representative from the department of health;

(h) At least one representative of family home child care providers and one representative of center care providers;

~~((g))~~ (i) At least one representative of early childhood development experts;

~~((h))~~ (j) At least one representative of school districts and teachers involved in the provision of child care and preschool programs;

~~((i))~~ (k) At least one parent education specialist;

~~((j))~~ (l) At least one representative of resource and referral programs;

~~((k))~~ (m) One pediatric or other health professional;

~~((l))~~ (n) At least one representative of college or university child care providers;

~~((m))~~ (o) At least one representative of a citizen group concerned with child care;

~~((n))~~ (p) At least one representative of a labor organization;

~~((o))~~ (q) At least one representative of a head start - early childhood education assistance program agency;

~~((p))~~ (r) At least one employer who provides child care assistance to employees;

~~((q))~~ (s) Parents of children receiving, or in need of, child care, half of whom shall be parents needing or receiving subsidized child care and half of whom shall be parents who are able to pay for child care.

The named state agencies shall select their representative to the child care coordinating committee. The department of social and health services shall select the remaining members, considering recommendations from lists submitted by professional associations and other interest groups until such time as the committee adopts a member selection process. The department shall use any federal funds which may become available to accomplish the purposes of RCW 74.13.085 through 74.13.095.

The committee shall elect officers from among its membership and shall adopt policies and procedures specifying the lengths of terms, methods for filling vacancies, and other matters necessary to the ongoing functioning of the committee. The secretary of social and health services shall appoint a temporary chair until the committee has adopted policies and elected a chair accordingly. Child care coordinating committee members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) To the extent possible within available funds, the child care coordinating committee shall:

(a) Serve as an advisory coordinator for all state agencies responsible for early childhood or child care programs for the purpose of improving communication and interagency coordination;

(b) Annually review state programs and make recommendations to the agencies and the legislature which will maximize funding and promote furtherance of the policies set forth in RCW 74.13.085. Reports shall be



provided to all appropriate committees of the legislature by December 1 of each year. At a minimum the committee shall:

(i) Review and propose changes to the child care subsidy system in its December 1989 report;

(ii) Review alternative models for child care service systems, in the context of the policies set forth in RCW 74.13.085, and recommend to the legislature a new child care service structure; and

(iii) Review options and make recommendations on the feasibility of establishing an allocation for day care facilities when constructing state buildings;

(c) Review department of social and health services administration of the child care expansion grant program described in RCW 74.13.095;

(d) Review rules regarding child care facilities and services for the purpose of identifying those which unnecessarily obstruct the availability and affordability of child care in the state;

(e) Advise and assist the child care resource coordinator in implementing his or her duties under RCW 74.13.0903; ~~(and)~~

(f) Perform other functions to improve the quantity and quality of child care in the state, including compliance with existing and future prerequisites for federal funding; and

(g) Advise and assist the department of personnel in its responsibility for establishing policies and procedures that provide for the development of quality child care programs for state employees.

Passed the House March 12, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 195

[House Bill 1800]

### FUNDING OF OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Effective Date: 7/25/93

AN ACT Relating to the funding of the office of minority and women's business enterprises; and adding new sections to chapter 39.19 RCW.

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

NEW SECTION. **Sec. 1.** The minority and women's business enterprises account is created in the custody of the state treasurer. All receipts from sections 2, 3, and 4 of this act shall be deposited in the account. Expenditures from the account may be used only for the purposes defraying all or part of the costs of the office in administering this chapter. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account may be spent only after appropriation.

NEW SECTION. Sec. 2. The office may charge a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, to a business using the services of the office.

NEW SECTION. Sec. 3. The office may charge to a political subdivision in this state a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, prorated on the relative benefit to the political subdivision, for the certification under this chapter of a business.

NEW SECTION. Sec. 4. The office may charge to a state agency and educational institutions, as both are defined in RCW 39.19.020, a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, based upon the state agency's or educational institution's expenditure level of funds subject to the office.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act are each added to chapter 39.19 RCW.

Passed the House April 17, 1993.

Passed the Senate April 18, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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**CHAPTER 196**

[Substitute Senate Bill 5025]

**NATURAL RESOURCES DEPARTMENT FOREST FIRE DUTIES AND AUTHORITY**

**Effective Date: 7/25/93**

AN ACT Relating to forest fires; amending RCW 76.04.495 and 76.04.015; and adding a new section to chapter 76.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 76.04 RCW to read as follows:

The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner.

Sec. 2. RCW 76.04.495 and 1986 c 100 s 33 are each amended to read as follows:

(1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection (~~(incurred by)~~). The state, a municipality, (~~or~~) a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington.

**Sec. 3.** RCW 76.04.015 and 1986 c 100 s 2 are each amended to read as follows:

(1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and direct the work of suppressing forest fires;

(c) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or

corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if: (i) The evidence is used by the owner in conducting a business or in providing an electric utility service; and (ii) the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this paragraph does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state; and

(f) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timber lands within the state;

(ii) The extent to which timber lands are being destroyed by fire and the damage thereon.

(5) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest fire fighting and patrol.

Passed the Senate April 19, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 197

[Substitute Senate Bill 5035]

PUBLIC RESTROOMS—AUTHORITY TO USE LODGING TAX PROCEEDS TO PROVIDE

Effective Date: 7/25/93

AN ACT Relating to public restroom facilities; and amending RCW 67.28.210.

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

**Sec. 1.** RCW 67.28.210 and 1992 c 202 s 1 are each amended to read as follows:

All taxes levied and collected under RCW 67.28.180, 67.28.240, and 67.28.260 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. In addition such taxes may be used to develop strategies to expand tourism: PROVIDED, That any county, and any city within a county, bordering upon Grays Harbor may use the proceeds of such taxes for construction and maintenance of a movable tall ships tourist attraction in cooperation with a tall ships restoration society, except to the extent that such proceeds are used for payment of principal and interest on debt incurred prior to June 11, 1986: PROVIDED FURTHER, That any city or county may use the proceeds of such taxes for the refurbishing and operation of a steam railway for tourism promotion purposes: PROVIDED FURTHER, That any city bordering on the Pacific Ocean with a population of not less than one thousand and the county in which such a city is located may

use the proceeds of such taxes for funding special events or festivals, or promotional infrastructures including but not limited to an ocean beach boardwalk: PROVIDED FURTHER, That any county, city or town, if the city or town has a population less than five thousand, may use the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities available to and intended for use by visitors.

Passed the Senate April 17, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 198

[Substitute Senate Bill 5048]

### MUNICIPAL PUBLIC WORKS CONTRACTS—BIDDING PRACTICES—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to bidding practices of municipalities; and amending RCW 39.04.155, 39.04.190, 39.04.200, 39.30.045, 36.32.240, 36.32.253, 36.32.245, 36.32.250, 35.22.620, 35.23.352, 52.14.110, 52.14.120, 53.08.120, 54.04.070, 54.04.082, 56.08.070, 56.08.080, 56.08.090, 57.08.015, 57.08.016, 57.08.050, and 70.44.140.

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

**Sec. 1.** RCW 39.04.155 and 1991 c 363 s 109 are each amended to read as follows:

(1) This section provides a uniform process to award contracts for public works projects by those ~~((counties))~~ municipalities that are authorized to use a small works roster in lieu of the requirements for formal sealed bidding. The state statutes governing ~~((counties))~~ a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the small works roster process, for the ~~((county))~~ municipality.

(2) ~~((Counties))~~ Such municipalities may create a single general small works roster, or may create a small works roster for different categories of anticipated work. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. At least ~~((once))~~ twice a year, the ~~((county))~~ municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters.

The governing body of the ~~((county))~~ municipality shall establish a procedure for securing telephone or written quotations from the contractors on the general small works roster, or a specific small works roster for the appropriate category of work, to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW

43.19.1911. Such invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Whenever possible at least five contractors shall be invited to submit bids. Once a contractor has been afforded an opportunity to submit a proposal, that contractor shall not be offered another opportunity until all other appropriate contractors on the small works roster have been afforded an opportunity to submit a proposal on a contract. Proposals may be invited from all appropriate contractors on the small works roster.

A contract awarded from a small works roster under this section need not be advertised.

Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

**Sec. 2.** RCW 39.04.190 and 1991 c 363 s 110 are each amended to read as follows:

(1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those ~~((counties))~~ municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing ~~((counties))~~ a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the awarding of contracts for purchases, for the ~~((county))~~ municipality.

(2) At least ~~((one))~~ twice per year, the ~~((county))~~ municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. ~~((Counties))~~ Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible bidder as defined in RCW 43.19.1911. Immediately after the award is made, the bid quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised.

**Sec. 3.** RCW 39.04.200 and 1991 c 363 s 111 are each amended to read as follows:

Any ~~((county))~~ municipality that utilizes the small works roster process established in RCW 39.04.155 to award contracts for public works projects, or the uniform process established in RCW 39.04.190 to award contracts for purchases, must post a list of the contracts awarded under RCW 39.04.155 and 39.04.190 at least once every two months. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract,

and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

**Sec. 4.** RCW 39.30.045 and 1991 c 363 s 112 are each amended to read as follows:

Any (~~county~~) municipality, as defined in RCW 39.04.010, may purchase any supplies, equipment, or materials at auctions conducted by the government of the United States or any agency thereof, any agency of the state of Washington, any municipality or other government agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price.

**Sec. 5.** RCW 36.32.240 and 1991 c 363 s 57 are each amended to read as follows:

In any county the county legislative authority may by resolution establish a county purchasing department. In each county which exercises this option, the purchasing department shall contract on a competitive basis for all public works, enter into leases of personal property on a competitive basis, and purchase all supplies, materials, and equipment, on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases for the county hospital, or make purchases that are paid from the county road fund or equipment rental and revolving fund.

**Sec. 6.** RCW 36.32.253 and 1991 c 363 s 63 are each amended to read as follows:

No lease of personal property may be entered into by the county legislative authority or by any elected or appointed officer of the county (~~until after bids have been submitted to the county. The county shall use the same~~) except upon use of the procedures specified in ((RCW 36.32.245 and 39.04.190)) this chapter and chapter 39.04 RCW for awarding contracts for purchases when it leases personal property from the lowest responsible bidder.

**Sec. 7.** RCW 36.32.245 and 1991 c 363 s 62 are each amended to read as follows:

(1) No contract for the purchase of materials, equipment, or supplies(~~or services~~) may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county. Bid specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the official newspaper of the county stating the time and place where bids will be opened, the time after which bids will not be received, the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least (~~ten~~) thirteen days prior to the last date upon which bids will be received.



(2) The bids shall be in writing and filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Contracts requiring competitive bidding under this section may be awarded only to the lowest responsible bidder. Immediately after the award is made, the bid quotations shall be recorded and open to public inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between two thousand five hundred and twenty-five thousand dollars, the county legislative authority must use the uniform process to award contracts as provided in RCW 39.04.190. Advertisement and formal sealed bidding may be dispensed with as to purchases of less than two thousand five hundred dollars upon the order of the county legislative authority.

(4) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW; or contracts and purchases for the printing of election ballots, voting machine labels, and all other election material containing the names of candidates and ballot titles.

(5) Nothing in this section shall prohibit the legislative authority of any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

**Sec. 8.** RCW 36.32.250 and 1991 c 363 s 58 are each amended to read as follows:

No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least ~~(ten)~~ thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount

equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than ten thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

For advertisement and competitive bidding to be dispensed with as to public works projects with an estimated value of ten thousand dollars up to one hundred thousand dollars (~~or less~~), a county must use a small works roster process as provided in RCW 39.04.155.

This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

**Sec. 9.** RCW 35.22.620 and 1989 c 431 s 59 are each amended to read as follows:

(1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports

to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population in excess of one hundred fifty thousand shall not have public employees perform a public works project in excess of fifty thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population of one hundred fifty thousand or less shall not have public employees perform a public works project in excess of thirty-five thousand dollars if more than one craft or trade is involved with the public works project, or a public works project in excess of twenty thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

After September 1, 1987, each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The

value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) When any emergency shall require the immediate execution of such public work, upon the finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the city council shall adopt a resolution certifying the existence of this emergency situation.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may use a small works roster process and award contracts (~~under this subsection for contracts~~) for public works projects with an estimated value of one hundred thousand dollars or less as provided in RCW 39.04.155.

~~((a) The city may maintain a small works roster comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in this state.~~

~~(b) Whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less, and the city uses the small works roster, the city shall invite proposals from all appropriate contractors on the small works roster. PROVIDED, That not less than five separate appropriate contractors, if available, shall be invited to submit bids on any one contract. PROVIDED FURTHER, That))~~ Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section. ((Once a bidder on the small works roster has been offered an opportunity to bid, that bidder shall not be offered another opportunity until all other appropriate contractors on the small works roster have been afforded an opportunity to submit a bid. Invitations shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.

~~(c) When awarding such a contract for work, the estimated cost of which is one hundred thousand dollars or less, the city shall award the contract to the contractor submitting the lowest responsible bid.))~~

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

**Sec. 10.** RCW 35.23.352 and 1989 c 431 s 56 are each amended to read as follows:

(1) Any second or third class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of

thirty thousand dollars if more than one craft or trade is involved with the public works, or twenty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon ~~((posting))~~ publication of notice calling for sealed bids upon the work. The notice ~~((thereof shall be posted in a public place in the city or town and by publication))~~ shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, ~~((once each week for two consecutive weeks before))~~ at least thirteen days prior to the ~~((date fixed for opening the bids))~~ last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in ~~((the full amount of the contract price))~~ accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second or third class city or a town may use a small works roster process and award public

works contracts ((under this subsection for contracts)) with an estimated value of one hundred thousand dollars or less as provided in RCW 39.04.155.

~~((a) The city or town may maintain a small works roster comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in this state.~~

~~(b) Whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less, and the city uses the small works roster, the city or town shall invite proposals from all appropriate contractors on the small works roster. PROVIDED, That) Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section. ((The invitation shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.~~

~~(c) When awarding such a contract for work, the estimated cost of which is one hundred thousand dollars or less, the city or town shall award the contract to the contractor submitting the lowest responsible bid.))~~

(4) After September 1, 1987, each second class city, third class city, and town shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, equipment or services other than professional services, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids(~~PROVIDED, That the limitations herein shall not apply to any purchases of materials at auctions conducted by the government of the United States, any agency thereof or by the state of Washington or a political subdivision thereof).~~

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper ~~((published or))~~ of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and ~~((competitive))~~ formal sealed bidding to be dispensed with as to purchases between seven thousand five hundred and fifteen thousand dollars, the city legislative authority must authorize by resolution ~~((a))~~, use of the uniform procedure ~~((for securing telephone and/or written quotations from enough vendors to assure establishment of a competitive price and for awarding the contracts for purchase of materials, equipment, or services to the lowest responsible bidder. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry))~~ provided in RCW 39.04.190.

(9) These requirements for purchasing may be waived by resolution of the city or town council which declared that the purchase is clearly and legitimately limited to a single source or supply within the near vicinity, or the materials,

supplies, equipment, or services are subject to special market conditions, and recites why this situation exists. Such actions are subject to RCW 39.30.020.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second or third class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

**Sec. 11.** RCW 52.14.110 and 1984 c 238 s 3 are each amended to read as follows:

Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) Emergency purchases if the sealed bidding procedure would prevent or hinder the emergency from being addressed appropriately. The term emergency means an occurrence that creates an immediate threat to life or property;

(2) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ~~((ten))~~ four thousand five hundred dollars ~~((PROVIDED, That)).~~ However, whenever the estimated cost is from ((forty five hundred)) four thousand five hundred dollars up to ten thousand dollars, the commissioners ((shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal to assure establishment of a competitive price for such purchase)) may by resolution use the process provided in RCW 39.04.190 to award contracts;

(3) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment. However, whenever the estimated cost is from two thousand five hundred dollars up to ten thousand dollars, the commissioner may by resolution use the small works roster process provided in RCW 39.04.155;

(4) Purchases which are clearly and legitimately limited to a single source of supply, or services, in which instances the purchase price may be best established by direct negotiation: PROVIDED, That this subsection shall not apply to purchases or contracts relating to public works as defined in chapter 39.04 RCW; and

(5) Purchases of insurance and bonds.

**Sec. 12.** RCW 52.14.120 and 1984 c 238 s 4 are each amended to read as follows:

(1) Notice of the call for bids shall be given by ~~((posting notice in three public places in the district and by publication once each week for two consecutive weeks. The posting and first publication shall be at least two weeks before the date fixed for opening of the bids, and the publication shall be))~~ publishing the notice in a newspaper of general circulation within the district at

least thirteen days before the last date upon which bids will be received. If no bid is received on the first call, the commissioners may readvertise and make a second call, or may enter into a contract without a further call.

(2) A public work involving three or more specialty contractors requires that the district retain the services of a general contractor as defined in RCW 18.27.010.

**Sec. 13.** RCW 53.08.120 and 1988 c 235 s 1 are each amended to read as follows:

All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts for work, the estimated cost of which exceeds one hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper of general circulation in the district at least ~~((ten))~~ thirteen days before the ~~((letting))~~ last date upon which bids will be received, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder.

Each port district shall maintain a small works roster ~~((which shall be comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in the state of Washington.))~~, as provided in RCW 39.04.155, and may use the small works roster process to award contracts in lieu of calling for sealed bids whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less~~((, the managing official of the port district may invite proposals from all appropriate contractors on the small works roster: PROVIDED, That not less than five separate appropriate contractors shall be invited to submit proposals on any individual contract: PROVIDED FURTHER, That))~~. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section. ~~((Such invitation shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.))~~

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

**Sec. 14.** RCW 54.04.070 and 1990 c 251 s 1 are each amended to read as follows:

Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of five thousand dollars, exclusive of sales tax shall be by contract: PROVIDED, That a district may make purchases of the same kind of items of materials, equipment and supplies



not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding fifty thousand dollars in value without a contract: PROVIDED, That such limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least ~~((twenty))~~ thirteen days before the ~~((letting of the contract))~~ last date upon which bids will be received, inviting sealed proposals for the work or materials; plans and specifications of which shall at the time of the publication be on file at the office of the district subject to public inspection~~((— PROVIDED, That any))~~. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

Notwithstanding any other provisions herein, all contract projects, the estimated cost of which is less than one hundred thousand dollars, may be awarded to a contractor ~~((on))~~ using the small works roster~~((— The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The commission shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year))~~ process provided in RCW 39.04.155. All contract projects equal to or in excess of one hundred thousand dollars shall be let by competitive bidding.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond. In the event of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the

commission, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract, after having taken precautions to secure the lowest price practicable under the circumstances.

After determination by the commission during a public meeting that a particular purchase is available clearly and legitimately only from a single source of supply, the bidding requirements of this section may be waived by the commission.

**Sec. 15.** RCW 54.04.082 and 1977 ex.s. c 116 s 1 are each amended to read as follows:

For the awarding of a contract to purchase any item, or items of the same kind of materials, equipment, or supplies in an amount exceeding five thousand dollars, but less than fifteen thousand dollars, exclusive of sales tax, the commission may, in lieu of the procedure described in RCW 54.04.070 and 54.04.080 requiring public notice to invite sealed proposals for such materials, equipment, or supplies, ~~((authorize by))~~ pursuant to commission resolution ((a staff procedure for securing telephone and/or written quotations from enough vendors to assure establishment of a competitive price and for awarding such contracts for purchase of materials, equipment, or supplies to the lowest responsible bidder. Immediately after the award is made, the bid quotations obtained shall be recorded and shall be posted or otherwise made available at the office of the commission or any other officially designated location)) use the process provided in RCW 39.04.190. Waiver of the deposit or bid bond required under RCW 54.04.080 may be authorized by the commission in securing such bid quotations.

**Sec. 16.** RCW 56.08.070 and 1989 c 105 s 1 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor ~~((on))~~ using the small works roster~~((The small works roster shall be comprised of all responsible contractors who have requested to be on the list))~~ process provided in RCW 39.04.155 or the process provided in RCW 39.04.190 for purchases. The board of sewer commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. ~~((The board of sewer commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations~~

~~obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year.~~) All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any competitive contract the board of sewer commissioners shall ~~((cause))~~ publish a notice ~~((to be published))~~ in a newspaper ~~((in))~~ of general circulation where the district is located at least once, ~~((ten))~~ thirteen days before the ~~((letting of such contract))~~ last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of sewer commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of sewer commissioners on or before the day and hour named therein.

(2) Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named such bids shall be publicly opened and read and the board of sewer commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications: PROVIDED, That no contract shall be let in excess of the cost of ~~((said))~~ the materials or work, or if in the opinion of the board of sewer commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of sewer commissioners in the full amount of the contract price between the bidder and the commission in accordance with bid. If ~~((said))~~ the bidder fails to enter into ~~((said))~~ the contract in accordance with ~~((said))~~ the bid and furnish such bond within ten days from the date at which ~~((he))~~ the bidder is notified that he or she is the successful bidder, the ~~((said))~~ check, cash, or bid bonds and the amount thereof shall be forfeited to the sewer district.

(3) In the event of an emergency when the public interest or property of the sewer district would suffer material injury or damage by delay, upon resolution of the board of sewer commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services,

or market conditions, in which instances the purchase price may be best established by direct negotiation.

**Sec. 17.** RCW 56.08.080 and 1989 c 308 s 5 are each amended to read as follows:

The board of commissioners of a sewer district may sell, at public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided: PROVIDED, That no notice of intention is required to sell personal property of less than two thousand five hundred dollars in value.

The notice of intention to sell shall be published once a week for ~~((three))~~ two consecutive weeks in a newspaper of general circulation in the district. ~~((The last publication shall be at least twenty days but not more than thirty days before the date of sale.))~~ The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids.

**Sec. 18.** RCW 56.08.090 and 1989 c 308 s 6 are each amended to read as follows:

(1) Subject to the provisions of subsection (2) of this section, no real property valued at two thousand five hundred dollars or more of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof: PROVIDED, That there shall be no private sale of real property where the appraised value exceeds the sum of two thousand five hundred dollars.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred ~~((eighty))~~ twenty days of offering the property for sale, the board of commissioners of the sewer district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The sewer district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for ~~((three))~~ two consecutive weeks in a newspaper of general circulation in the sewer district. ~~((The last publication shall be at least twenty days but not more than thirty days before the date of sale.))~~ The notice shall describe the property, state the time and place

at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids.

**Sec. 19.** RCW 57.08.015 and 1989 c 308 s 7 are each amended to read as follows:

The board of commissioners of a water district may sell, at public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided: PROVIDED, That no such notice of intention shall be required to sell personal property of less than two thousand five hundred dollars in value.

The notice of intention to sell shall be published once a week for ~~((three))~~ two consecutive weeks in a newspaper of general circulation in the district. ~~((The last publication shall be at least twenty days but not more than thirty days before the date of sale.))~~ The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids.

**Sec. 20.** RCW 57.08.016 and 1989 c 308 s 8 are each amended to read as follows:

(1) Subject to the provisions of subsection (2) of this section, no real property valued at two thousand five hundred dollars or more of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof: PROVIDED, That there shall be no private sale of real property where the appraised value exceeds the sum of two thousand five hundred dollars.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred ~~((eighty))~~ twenty days of offering the property for sale, the board of commissioners of the water district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The water district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for ~~((three))~~ two consecutive weeks in a newspaper of general circulation in the water district. ~~((The last publication shall be at least twenty days but not more than thirty days before the date of sale.))~~ The notice shall describe the property, state the time and place

at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids.

**Sec. 21.** RCW 57.08.050 and 1989 c 105 s 2 are each amended to read as follows:

(1) The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide.

(2) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor ~~((on the))~~ using a small works roster~~((The small works roster shall be comprised of all responsible contractors who have requested to be on the list))~~ process provided in RCW 39.04.155 or the process provided in RCW 39.04.190 for purchases. The board of water commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. ~~((The board of water commissioners shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year.))~~ All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any such contract the board of water commissioners shall ~~((cause))~~ publish a notice ~~((to be published))~~ in a newspaper ~~((it))~~ of general circulation where the district is located at least once ~~((ten))~~ thirteen days before the ~~((letting of such contract))~~ last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein.

(3) Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless ~~((he))~~ the bidder enters into a contract in accordance with his or her bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the

best bidder submitting his or her own plans and specifications: PROVIDED, That no contract shall be let in excess of the cost of ~~((said))~~ the materials or work, or if in the opinion of the board of water commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If ~~((said))~~ the bidder fails to enter into ~~((said))~~ the contract in accordance with ~~((said))~~ the bid and furnish such bond within ten days from the date at which ~~((he))~~ the bidder is notified that he or she is the successful bidder, the ~~((said))~~ check, cash or bid bonds and the amount thereof shall be forfeited to the water district: PROVIDED, That if the bidder fails to enter into a contract in accordance with his or her bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required herein, then the water district shall be entitled to collect from ~~((said))~~ the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby.

(4) In the event of an emergency when the public interest or property of the water district would suffer material injury or damage by delay, upon resolution of the board of water commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.

**Sec. 22.** RCW 70.44.140 and 1965 c 83 s 1 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall ~~((cause to be published))~~ publish a notice at least ~~((thirty))~~ thirteen days before the ~~((letting of said contract))~~ last date upon which bids will be received, inviting sealed proposals for such work~~((:))~~. The plans and specifications ~~((which))~~ must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for ~~((said))~~ the work or materials upon plans and specifications to be submitted by bidders. ~~((Such))~~ The notice shall state generally the work to be done, and shall call for proposals for

doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be let in excess of the estimated cost of ~~((said))~~ the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders; but if such contract be let, then and in such case all bid proposal security shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into ~~((said))~~ the contract in accordance with ~~((said))~~ the bid and furnish such bond within ten days from the date at which ~~((he))~~ the bidder is notified that he or she is the successful bidder, the ~~((said))~~ bid proposal security and the amount thereof shall be forfeited to the public hospital district.

(2) In lieu of the procedures of subsection (1) of this section, a public hospital district may use a small works roster process and award public works contracts for projects in excess of five thousand dollars up to fifty thousand dollars as provided in RCW 39.04.155.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between five thousand and fifteen thousand dollars, the commission must authorize by resolution a procedure as provided in RCW 39.04.190.

Passed the Senate April 17, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.



## CHAPTER 199

[Substitute Senate Bill 5052]

## CITY AND TOWN COUNCILS—MEETINGS AND MEMBERS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to cities and towns; and amending RCW 35.27.270, 35.24.180, and 35A.12.110.

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

**Sec. 1.** RCW 35.27.270 and 1965 c 7 s 35.27.270 are each amended to read as follows:

The town council shall meet (~~(on the second Tuesday)~~) in January succeeding the date of the general municipal election, shall take the oath of office, and shall hold regular meetings at least once each month at such times as may be fixed by ordinance. Special meetings may be called at any time by the mayor or by three (~~(councilmen)~~) councilmembers, by written notice (~~(delivered to each member at least three hours before the time specified for the proposed meeting)~~) as provided in RCW 42.30.080. No resolution or order for the payment of money shall be passed at any other than a regular meeting. No such resolution or order shall be valid unless passed by the votes of at least three (~~(councilmen)~~) councilmembers.

All meetings of the council shall be held (~~(within the corporate limits of the town,)~~) at such places as may be designated by (~~(ordinance and shall)~~) the town council. All final actions on resolutions and ordinances must take place within the corporate limits of the town. All meetings of the town council must be public.

**Sec. 2.** RCW 35.24.180 and 1965 c 7 s 35.24.180 are each amended to read as follows:

The city council and mayor shall meet (~~(on the first Tuesday)~~) in January next succeeding the date of each general municipal election, and shall take the oath of office, and shall hold regular meetings at least once during each month but not to exceed one regular meeting in each week, at such times as may be fixed by ordinance.

Special meetings may be called by the mayor by written notice (~~(delivered to each member of the council at least three hours before the time specified for the proposed meeting)~~) as provided in RCW 42.30.080. No ordinances shall be passed or contract let or entered into, or bill for the payment of money allowed at any special meeting.

All meetings of the city council shall be held (~~(within the corporate limits of the city)~~) at such place as may be designated by (~~(ordinance)~~) the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. All meetings of the city council must be public.

**Sec. 3.** RCW 35A.12.110 and 1979 ex.s. c 18 s 23 are each amended to read as follows:

The city council and mayor shall meet regularly, at least once a month, at a place (~~((within the corporate limits of the city))~~) and at such times as may be (~~((fixed by ordinance or resolution))~~) designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. All council meetings shall be open to the public except as permitted by chapter 42.30 RCW. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the council members at such meeting. Appointment of a council member to preside over the meeting shall not in any way abridge his right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record.

Passed the Senate April 17, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 200

[Substitute Senate Bill 5068]

### HOMESTEAD EXEMPTIONS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to homestead exemptions; amending RCW 6.13.010, 6.13.030, 6.13.040, and 6.15.060; and reenacting and amending RCW 6.13.080.

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

**Sec. 1.** RCW 6.13.010 and 1987 c 442 s 201 are each amended to read as follows:

(1) The homestead consists of real or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead

consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances.

**Sec. 2.** RCW 6.13.030 and 1991 c 123 s 2 are each amended to read as follows:

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, mobile home, ~~((and))~~ improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of thirty thousand dollars in the case of lands, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.13.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

**Sec. 3.** RCW 6.13.040 and 1987 c 442 s 204 are each amended to read as follows:

(1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c) or, if the homestead is any other personal property, from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of

property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recording officer in the county in which the land is located.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead;

(b) A legal description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

(a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead;

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

**Sec. 4.** RCW 6.13.080 and 1988 c 231 s 3 and 1988 c 192 s 1 are each reenacted and amended to read as follows:

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, materialmen's or vendor's liens ((upon the premises)) arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the ~~((mobile home))~~ property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time of that spouse's bankruptcy filing where (a) bankruptcy is filed by both spouses within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance; or

(5) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new

owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection.

**Sec. 5.** RCW 6.15.060 and 1988 c 231 s 7 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, property claimed exempt under RCW 6.15.010 shall be selected by the individual entitled to the exemption, or by the husband or wife entitled to a community exemption, in the manner described in subsection (3) of this section.

(2) If, at the time of seizure under execution or attachment of property exemptible under RCW 6.15.010(3) (a), (b), or (c), the individual or the husband or wife entitled to claim the exemption is not present, then the sheriff or deputy shall make a selection equal in value to the applicable exemptions and, if no appraisal is required and no objection is made by the creditor as permitted under subsection (4) of this section, the officer shall return the same as exempt by inventory. Any selection made as provided shall be prima facie evidence (a) that the property so selected is exempt from execution and attachment, and (b) that the property so selected is not in excess of the values specified for the exemptions.

(3)(a) A debtor who claims personal property as exempt against execution or attachment shall, at any time before sale, deliver to the officer making the levy a list by separate items of the property claimed as exempt, together with an itemized list of all the personal property owned or claimed by the debtor, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims and demands, and shall verify such list by affidavit. The officer shall immediately advise the creditor, attorney, or agent of the exemption claim and, if no appraisal is required and no objection is made by the creditor as permitted under subsection (4) of this section, the officer shall return with the process the list of property claimed as exempt.

(b) A debtor who claims personal property exempt against garnishment shall proceed as provided in RCW 6.27.160.

(c) A debtor who claims as a homestead, under chapter 6.13 RCW, a mobile home that is not yet occupied as a homestead and that is located on land not owned by the debtor shall claim the homestead as against a specific levy by delivering to the sheriff who levied on the mobile home, before sale under the levy, a declaration of homestead that contains (i) a declaration that the debtor owns the mobile home, intends to reside therein, and claims it as a homestead, and (ii) a description of the mobile home, a statement where it is located or was located before the levy, and an estimate of its actual cash value.

(d) A debtor who claims as a homestead, under RCW 6.13.040, any other personal property, shall at any time before sale, deliver to the officer making the levy a notice of claim of homestead in a statement that sets forth the following: (i) The debtor owns the personal property; (ii) the debtor resides thereon as a homestead; (iii) the debtor's estimate of the fair market value of the property; and (iv) the debtor's description of the property in sufficient detail for the officer making the levy to identify the same.

(4)(a) Except as provided in (b) of this subsection, a creditor, or the agent or attorney of a creditor, who wishes to object to a claim of exemption shall proceed as provided in RCW 6.27.160 and shall give notice of the objection to the officer not later than seven days after the officer's giving notice of the exemption claim.

(b) A creditor, or the agent or attorney of the creditor, who wishes to object to a claim of exemption made to a levying officer, on the ground that the property claimed exceeds exemptible value, may demand appraisalment. If the creditor, or the agent or attorney of the creditor, demands an appraisalment, two disinterested persons shall be chosen to appraise the property, one by the debtor and the other by the creditor, agent or attorney, and these two, if they cannot agree, shall select a third; but if either party fails to choose an appraiser, or the two fail to select a third, or if one or more of the appraisers fail to act, the court shall appoint one or more as the circumstances require. The appraisers shall forthwith proceed to make a list by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or attachment and be annexed to and made part of the return, and the property therein specified shall be exempt from levy and sale, but the other personal estate of the debtor shall remain subject to execution, attachment, or garnishment. Each appraiser shall be entitled to fifteen dollars or such larger fee as shall be fixed by the court, to be paid by the creditor if all the property claimed by the debtor shall be exempt; otherwise to be paid by the debtor.

(c) If, within seven days following the giving of notice to a creditor of an exemption claim, the officer has received no notice from the creditor of an objection to the claim or a demand for appraisalment, the officer shall release the claimed property to the debtor.

Passed the Senate March 13, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

**CHAPTER 201**

[Senate Bill 5079]

**RAZOR CLAMS—USE OF PHYSICAL DISABILITY PERMIT—REVISED CONDITIONS****Effective Date: 7/25/93**

AN ACT Relating to the digging of razor clams for persons with physical disability permits; and amending RCW 75.25.080.

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

**Sec. 1.** RCW 75.25.080 and 1989 c 305 s 4 are each amended to read as follows:

(1) It is lawful to dig the personal-use daily bag limit of razor clams for another person if that person has in possession a physical disability permit issued by the director.

(2) An application for a physical disability permit must be submitted on a department of fisheries official form and must be accompanied by a licensed medical doctor's certification of disability.

(3) A person with a physical disability permit is not required to be present at the location where another person is digging razor clams for the disabled person. The physical disability permittee is required to be in the direct line of sight of the person digging razor clams for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the physical disability permittee is required to be within one-quarter mile of the person who is digging razor clams for him or her.

Passed the Senate April 19, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

**CHAPTER 202**

[Substitute Senate Bill 5088]

**ADMINISTRATIVE RULES—ADOPTION OF FLEXIBLE APPROACHES TO DEVELOPING****Effective Date: 7/25/93**

AN ACT Relating to flexible approaches to developing administrative rules; amending RCW 34.05.310; adding new sections to chapter 34.05 RCW; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that while the 1988 Administrative Procedure Act expanded public participation in the agency rule-making process, there continue to be instances when participants have developed adversarial relationships with each other, resulting in the inability to identify all of the issues, the failure to focus on solutions to problems, unnecessary delays,

litigation, and added cost to the agency, affected parties, and the public in general.

When interested parties work together, it is possible to negotiate development of a rule that is acceptable to all affected, and that conforms to the intent of the statute the rule is intended to implement.

After a rule is adopted, unanticipated negative impacts may emerge. Examples include excessive costs of administration for the agency and compliance by affected parties, technical conditions that may be physically or economically unfeasible to meet, problems of interpretation due to lack of clarity, and reporting requirements that duplicate or conflict with those already in place.

It is therefore the intent of the legislature to encourage flexible approaches to developing administrative rules, including but not limited to negotiated rule making and a process for testing the feasibility of adopted rules, often called the pilot rule process. However, nothing in this act shall be construed to create any mandatory duty for an agency to use the procedures in RCW 34.05.310 or section 4 of this act in any particular instance of rule making. Agencies shall determine, in their discretion, when it is appropriate to use these procedures.

**Sec. 2.** RCW 34.05.310 and 1989 c 175 s 5 are each amended to read as follows:

~~((1) In addition to seeking information by other methods, an agency, before publication of a notice of a proposed rule adoption under RCW 34.05.320, is encouraged to solicit comments from the public on a subject of possible rule making under active consideration within the agency, by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.~~

~~(2) Each agency may appoint committees to comment, before publication of a notice of proposed rule adoption under RCW 34.05.320, on the subject of a possible rule making action under active consideration within the agency.~~

~~(3) Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible or proposed rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency.)) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies are encouraged to:~~

(1) Solicit comments from the public on a subject of possible rule making before publication of a notice of proposed rule adoption under RCW 34.05.320. This process can be accomplished by having a notice published in the state register of the subject under active consideration and indicating where, when, and how persons may comment; and



(2) Develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Identifying individuals and organizations that have a recognized interest in or will be significantly affected by the adoption of the proposed rule;

(b) Soliciting participation by persons who are capable, willing, and appropriately authorized to enter into such negotiations;

(c) Assuring that participants fully recognize the consequences of not participating in the process, are committed to negotiate in good faith, and recognize the alternatives available to other parties;

(d) Establishing guidelines to encourage consideration of all pertinent issues, to set reasonable completion deadlines, and to provide fair and objective settlement of disputes that may arise;

(e) Agreeing on a reasonable time period during which the agency will be bound to the rule resulting from the negotiations without substantive amendment;  
and

(f) Providing a mechanism by which one or more parties may withdraw from the process or the negotiations may be terminated if it appears that consensus cannot be reached on a draft rule that accommodates the needs of the agency, interested parties, and the general public and conforms to the legislative intent of the statute that the rule is intended to implement.

**NEW SECTION. Sec. 3.** Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible or proposed rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency.

**NEW SECTION. Sec. 4.** If, during development of a rule or after its adoption, an agency determines that implementation may produce unreasonable economic, procedural, or technical burdens, agencies are encouraged to develop methods for measuring or testing the feasibility of compliance with the rule, including the use of voluntary pilot study groups. Measuring and testing methods should emphasize public notice, participation by persons who have a recognized interest in or are significantly affected by the adoption of the proposed rule, a high level of involvement from agency management, consensus on issues and procedures among participants in the pilot group, assurance of fairness, and reasonable completion dates, and a process by which one or more parties may withdraw from the process or the process may be terminated if consensus cannot be reached on the rule.

The findings of the pilot project should be widely shared and, where appropriate, adopted as amendments to the rule.

**NEW SECTION. Sec. 5.** Sections 3 and 4 of this act are each added to chapter 34.05 RCW under the subchapter heading "rule-making procedures."

Passed the Senate April 19, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 203

[Substitute Senate Bill 5145]

### BUNGEE JUMPING REGULATED

Effective Date: 7/25/93

AN ACT Relating to amusement rides; amending RCW 67.42.010, 67.42.020, 67.42.040, and 67.42.060; adding a new section to chapter 67.42 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that:

Bungee jumping is growing in popularity as a new source of entertainment for the citizens of this state;

Individuals have suffered serious injuries in states where the regulation of this activity was minimal or nonexistent; and

The potential for harm to individuals participating in this activity likely increases in the absence of state regulation of these activities.

(2) It is the intent of the legislature to require bungee jumping operations to be regulated by the state to the extent necessary to protect the health and safety of individuals participating in this activity.

**Sec. 2.** RCW 67.42.010 and 1985 c 262 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Amusement structure" means ~~((any))~~ electrical or mechanical devices or combinations ~~((thereof))~~ of devices operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. "Amusement structure" also means a bungee jumping device regardless of where located. "Amusement structure" does not include games in which a member of the public must perform an act, nor concessions at which customers may make purchases.

(2) "Amusement ride" means any vehicle, boat, bungee jumping device, or other mechanical device moving upon or within a structure, along cables or rails, through the air by centrifugal force or otherwise, or across water, that is used to convey one or more individuals for amusement, entertainment, diversion, or

recreation. "Amusement ride" includes, but is not limited to, devices commonly known as skyrides, ferris wheels, carousels, parachute towers, tunnels of love, bungee jumping devices, and roller coasters. "Amusement ride" (~~shall~~) does not include: (a) Conveyances for persons in recreational winter sports activities such as ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under chapter 70.88 RCW; (b) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; (c) nonmechanized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices; or (d) water slides.

(3) "Department" means the department of labor and industries.

(4) "Insurance policy" means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW.

**Sec. 3.** RCW 67.42.020 and 1986 c 86 s 1 are each amended to read as follows:

Before operating any amusement ride or structure, the owner or operator shall:

(1) Obtain a permit pursuant to RCW 67.42.030;

(2) Have the amusement ride or structure inspected for safety at least once annually by an insurer, a person with whom the insurer has contracted, or a person who meets the qualifications set by the department and obtain from the insurer or person a written certificate that the inspection has been made and that the amusement ride or structure meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section. A bungee jumping device, including, but not limited to, the crane, tower, balloon or bridge, person lift basket, platforms, bungee cords, end attachments, anchors, carabiners or locking devices, harnesses, landing devices, and additional ride operation hardware shall be inspected for safety prior to beginning operation and annually by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices. The operator of the bungee jumping device shall obtain a written certificate which states that the required inspection has been made and the bungee jumping device meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section;

(3) Have and keep in effect an insurance policy in an amount not less than one million dollars per occurrence insuring: (a) The owner or operator; and (b) any municipality or county on whose property the amusement ride or structure stands, or any municipality or county which has contracted with the owner or operator against liability for injury to persons arising out of the use of the amusement ride or structure;

(4) File with the department the inspection certificate and insurance policy required by this section; and

(5) File with each sponsor, lessor, landowner, or other person responsible for an amusement structure or ride being offered for use by the public a certificate stating that the insurance required by subsection (3) of this section is in effect.

**Sec. 4.** RCW 67.42.040 and 1985 c 262 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section or unless a shorter period is specified by the department, permits issued under RCW 67.42.030 are valid for a one-year period.

(2) If an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, the amusement ride or structure shall be subject to a new inspection under RCW 67.42.020 and the owner or operator shall apply for a new permit under RCW 67.42.030.

(3) If an amusement ride or structure for which a permit has been issued pursuant to RCW 67.42.030 is moved and installed in another place but is not materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, no new permit is required prior to the expiration of the permit.

(4) A bungee jumping device or a part of a device, including, but not limited to, the crane, person lift basket, mobile crane, balloon or balloon basket, anchor or anchor attachment structure, or landing device, that is replaced shall be reinspected by an insurer, a person with whom the insurer has contracted, or by a person authorized by the department to inspect bungee jumping devices, and the owner or operator of the device shall apply for a new permit under RCW 67.42.030.

(5) A bungee jumping operator shall have any bungee jumping device or structure that is moved and installed in another location reinspected by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices before beginning operation.

(6) Any new operator who purchases an existing bungee jumping device or structure must have the bungee jumping device inspected and permitted as required under RCW 67.42.020 before beginning operation.

**Sec. 5.** RCW 67.42.060 and 1985 c 262 s 6 are each amended to read as follows:

(1) The department may charge a reasonable fee not to exceed ten dollars for each permit issued under RCW 67.42.030. All fees collected by the department under this chapter shall be deposited in the state general fund. This subsection does not apply to permits issued under RCW 67.42.030 to operate a bungee jumping device.

(2) The department may charge a reasonable fee not to exceed one hundred dollars for each permit issued under RCW 67.42.030 to operate a bungee jumping device. Fees collected under this subsection shall be deposited in the

state general fund for appropriation for the permitting and inspection of bungee jumping devices under this chapter.

**NEW SECTION.** Sec. 6. A new section is added to chapter 67.42 RCW to read as follows:

(1) Bungee jumping from a publicly owned bridge or publicly owned land is allowed only if permission has been granted by the government body that has jurisdiction over the bridge or land.

(2) Bungee jumping into publicly owned waters is allowed only if permission has been granted by the government body that has jurisdiction over the body of water.

(3) Bungee jumping from a privately owned bridge is allowed only if permission has been granted by the owner of the bridge.

Passed the Senate April 19, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 204

[Substitute Senate Bill 5159]

### URBAN FORESTRY PROGRAMS TO CONSERVE ENERGY ENCOURAGED

**Effective Date:** 7/25/93

AN ACT Relating to urban forestry; amending RCW 35.92.355, 43.19.668, 76.12.160, and 80.28.024; adding a new section to chapter 35.92 RCW; adding a new section to chapter 35A.80 RCW; adding a new section to chapter 80.28 RCW; adding a new section to chapter 40.19 RCW; adding new sections to chapter 76.15 RCW; and creating a new section.

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

**NEW SECTION.** Sec. 1. The legislature finds that large-scale reduction of tree cover increases the temperature of urban areas, known as the "heat island effect." Planting trees in urban areas for shading and cooling mitigates the urban heat island effect and reduces energy consumption. Tree planting also can benefit the environment by combating global climate change, reducing soil erosion, and improving air quality. Urban forestry programs can improve urban aesthetics that will improve public and private property values.

The legislature also finds that urban forestry programs should consider the relationship between urban forests and public service facilities such as water, sewer, natural gas, telephone, and electric power lines. Urban forestry programs should promote the use of appropriate tree species that will not interfere with or cause damage to such public service facilities.

**NEW SECTION.** Sec. 2. A new section is added to chapter 35.92 RCW to read as follows:

(1) Municipal utilities under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Municipal utilities under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of request for a voluntary donation.

**NEW SECTION.** Sec. 3. A new section is added to chapter 35A.80 RCW to read as follows:

(1) Code cities providing utility services under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Code cities providing utility services under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

**NEW SECTION.** Sec. 4. A new section is added to chapter 80.28 RCW to read as follows:

(1) Gas companies and electrical companies under this chapter may provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Gas companies and electrical companies under this chapter may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

Sec. 5. RCW 35.92.355 and 1979 ex.s. c 239 s 1 are each amended to read as follows:

The conservation of energy in all forms and by every possible means is found and declared to be a public purpose of highest priority. The legislature further finds and declares that all municipal corporations, quasi municipal corporations, and other political subdivisions of the state which are engaged in the generation, sale, or distribution of energy should be granted the authority to develop and carry out programs which will conserve resources, reduce waste, and encourage more efficient use of energy by consumers.

In order to establish the most effective state-wide program for energy conservation, the legislature hereby encourages any company, corporation, or association engaged in selling or furnishing utility services to assist their customers in the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy. The use of appropriate tree plantings for energy conservation is encouraged as part of these programs.

Sec. 6. RCW 43.19.668 and 1980 c 172 s 1 are each amended to read as follows:

The legislature finds and declares that the buildings, facilities, equipment, and vehicles owned or leased by state government consume significant amounts of energy and that energy conservation actions to provide for efficient energy use in these buildings, facilities, equipment, and vehicles will reduce the costs of state government. In order for the operations of state government to provide the citizens of this state an example of energy use efficiency, the legislature further finds and declares that state government should undertake an aggressive program designed to reduce energy use in state buildings, facilities, equipment, and vehicles within a reasonable period of time. The use of appropriate tree plantings for energy conservation is encouraged as part of this program.

**Sec. 7.** RCW 76.12.160 and 1988 c 128 s 35 are each amended to read as follows:

The department is authorized to sell to or exchange with persons intending to restock forest areas, tree seedling stock and tree seed produced at the state nursery.

The department may provide at cost, stock or seed to local governments or nonprofit organizations for urban tree planting programs consistent with the community and urban forestry program.

**Sec. 8.** RCW 80.28.024 and 1980 c 149 s 1 are each amended to read as follows:

The legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, the use of appropriate tree plantings for energy conservation, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private energy utilities. The legislature therefore finds and declares that actions and incentives by state government to promote conservation and the use of renewable resources would be of great benefit to the citizens of this state by encouraging efficient energy use and a reliable supply of energy based upon renewable energy resources.

**NEW SECTION. Sec. 9.** A new section is added to chapter 43.19 RCW to read as follows:

The director of the department of general administration shall seek to further energy conservation objectives among other landscape objectives in planting and maintaining trees upon grounds administered by the department.

**NEW SECTION. Sec. 10.** A new section is added to chapter 76.15 RCW to read as follows:

The department may enter into agreements with one or more nonprofit organizations whose primary purpose is urban tree planting. The agreements shall be to further public education about and support for urban tree planting, and for obtaining voluntary activities by the local community organizations in tree planting programs. The agreements shall ensure that such programs are

consistent with the purposes of the community and urban forestry program under this chapter.

**NEW SECTION.** Sec. 11. A new section is added to chapter 76.15 RCW to read as follows:

The department shall encourage urban planting of tree varieties that are site-appropriate and provide the best combination of energy and water conservation, fire safety and other safety, wildlife habitat, and aesthetic value. The department may provide technical assistance in developing programs in tree planting for energy conservation in areas of the state where such programs are most cost-effective.

Passed the Senate March 17, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 205

[Senate Bill 5290]

### FREE HOSPITALS—SALES AND USE TAX EXEMPTIONS

Effective Date: 5/6/93

AN ACT Relating to retail sales and use taxes; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital.

**NEW SECTION.** Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use by free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital.

**NEW SECTION.** Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.



Passed the Senate March 4, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 206

[Engrossed Senate Bill 5768]

### ARCHITECT OR ENGINEER SERVICES AT EMERGENCY SCENE—IMMUNITY FROM CIVIL LIABILITY

Effective Date: 7/25/93

AN ACT Relating to architectural and engineering inspection services at an emergency scene; amending RCW 38.52.010; and adding a new section to chapter 38.52 RCW.

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

**Sec. 1.** RCW 38.52.010 and 1986 c 266 s 23 are each amended to read as follows:

As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural or man-made, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person, including but not limited to an architect registered under chapter 18.08 RCW or a professional engineer registered under chapter 18.43 RCW, who is registered with a local emergency management organization or the department of community development and holds an identification card issued by the local emergency management director or the department of community development for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6) "Emergency or disaster" as used in this chapter shall mean an event or set of circumstances which: (a) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (b) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural or man-made disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor.

(9) "Director" means the director of community development.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the department of community development.

**NEW SECTION.** Sec. 2. A new section is added to chapter 38.52 RCW to read as follows:

For purposes of the liability of an architect or engineer serving as a volunteer emergency worker, the exemption from liability provided under RCW 38.52.195 extends to all damages, so long as the conditions specified in RCW 38.52.195 (1) through (5) occur.

Passed the Senate April 18, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 207

[Senate Bill 5791]

### CHILD SUPPORT ORDERS—REVISION OF REQUIRED CONTENTS

Effective Date: 7/25/93

AN ACT Relating to mandatory provisions in child support orders; and amending RCW 26.23.050.

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

**Sec. 1.** RCW 26.23.050 and 1991 c 367 s 39 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the superior court shall include in all superior court orders which establish or modify a support obligation:

(a) A provision which orders and directs that the responsible parent make all support payments to the Washington state support registry;

(b) A statement that a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 RCW or chapter 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(c) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

(2) The court may order the responsible parent to make payments directly to the person entitled to receive the payments or, for orders entered on or after July 1, 1990, direct that the issuance of a notice of payroll deduction or other income withholding actions be delayed until a support payment is past due if the court approves an alternate payment plan. The parties to the order must agree to such a plan and the plan must contain reasonable assurances that payments will be made in a regular and timely manner. The court may approve such a plan and modify or terminate the payroll deduction or other income withholding action at the time of entry of the order or at a later date upon motion and agreement of the parties. If the order directs payment to the person entitled to receive the payments instead of to the Washington state support registry, the order shall include a statement that the order may be submitted to the registry if a support payment is past due. If the order directs delayed issuance of the notice of payroll deduction or other income withholding action, the order shall include a statement that such action may be taken, without further notice, at any time after a support payment is past due. The provisions of this subsection do not apply if the department is providing public assistance under Title 74 RCW.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that a notice of payroll deduction may be issued, or other income withholding action taken without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that a notice of payroll deduction may be issued if a support payment is past due or at any time after the entry of the order, the office of support enforcement may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) That payment shall be made to the Washington state support registry or in accordance with the alternate payment plan approved by the court;

(b) That a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 RCW or chapter 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of an order by the court, unless:

(i) The court approves an alternate payment plan under subsection (2) of this section;

(ii) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(iii) The parties reach an alternate agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The social security number, residence address, and name and address of the employer of the responsible parent;

(g) The social security number and residence address of the physical custodian except as provided in subsection (6) of this section;

(h) The names, dates of birth, and social security numbers, if any, of the dependent children;

(i) In cases requiring payment to the Washington state support registry, that the parties are to notify the Washington state support registry of any change in residence address. The responsible parent shall notify the registry of the name and address of his or her current employer, whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

(j) That any parent owing a duty of child support shall be obligated to provide health insurance coverage for his or her child if coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related as provided under RCW 26.09.105;

(k) That if proof of health insurance coverage is not provided within twenty days, the obligee or the department may seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under chapter 26.18 RCW; and

(1) The reasons for not ordering health insurance coverage if the order fails to require such coverage.

(6) The physical custodian's address shall be omitted from an order entered under the administrative procedure act. A responsible parent whose support obligation has been determined by such administrative order may request the physical custodian's residence address by submission of a request for disclosure under RCW 26.23.120.

(7) The superior court clerk, the office of administrative hearings, and the department of social and health services shall, within five days of entry, forward to the Washington state support registry, a true and correct copy of all superior court orders or administrative orders establishing or modifying a support obligation which provide that support payments shall be made to the support registry. If a superior court order entered prior to January 1, 1988, directs the responsible parent to make support payments to the clerk, the clerk shall send a true and correct copy of the support order and the payment record to the registry for enforcement action when the clerk identifies that a payment is more than fifteen days past due. The office of support enforcement shall reimburse the clerk for the reasonable costs of copying and sending copies of court orders to the registry at the reimbursement rate provided in Title IV-D of the social security act.

(8) Receipt of a support order by the registry or other action under this section on behalf of a person or persons who are not recipients of public assistance is deemed to be a request for support enforcement services under RCW 74.20.040 to the fullest extent permitted under federal law.

(9) After the responsible parent has been ordered or notified to make payments to the Washington state support registry in accordance with subsection (1), (3), or (4) of this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

(10) As used in this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate income withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

Passed the Senate March 16, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

CHAPTER 208

[Substitute Senate Bill 5337]

AIRCRAFT REGISTRATION AND AIRMAN OR AIRWOMAN  
REGISTRATION—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to the department of transportation's aeronautics division; amending RCW 14.20.010, 14.20.020, 47.68.020, 47.68.230, 47.68.240, and 47.68.250; adding a new section to chapter 47.68 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 14.20.010 and 1984 c 7 s 9 are each amended to read as follows:

When used in this chapter and RCW 47.68.250 and 82.48.100:

- (1) "Person" includes a firm, partnership, or corporation;
- (2) "Dealer" means a person engaged in the business of selling, exchanging, or acting as a broker of aircraft or who offers for sale two or more aircraft within a calendar year;
- (3) "Aircraft" means any weight-carrying device or structure for navigation of the air, designed to be supported by the air, but which is heavier than air and is mechanically driven;
- (4) "Secretary" means the secretary of the state department of transportation.

**Sec. 2.** RCW 14.20.020 and 1984 c 7 s 10 are each amended to read as follows:

(1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter. A person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both. A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as contempt of court.

(2) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 47.68 RCW to read as follows:

The department shall require that every airman or airwoman that is not registered under RCW 47.68.233 and who is a resident of this state, or every nonresident airman or airwoman who is regularly performing duties as an airman

or airwoman within this state, be registered with the department. The department shall charge an annual fee not to exceed ten dollars for each registration. A registration certificate issued under this section is to be renewed annually during the month of the registrant's birthdate.

The department shall use the registration fee imposed under this section for the purposes of: (1) Search and rescue of lost and downed aircraft and airmen or airwomen under the direction and supervision of the secretary; and (2) safety and education.

Registration is affected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and, in connection with the certificates, shall provide requirements for the possession and exhibition of the certificates.

Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties incident to this section.

**Sec. 4.** RCW 47.68.020 and 1984 c 7 s 342 are each amended to read as follows:

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon.

(4) "Department" means the state department of transportation.

(5) "Secretary" means the state secretary of transportation.

(6) "State" or "this state" means the state of Washington.

(7) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(8) "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon any airport within this state.

(9) "Airman or airwoman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, airframes, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the person.

(10) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics, but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, while in the performance of his or her duties at such school, university, or institution.

(11) "Air school" means any person who advertises, represents, or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(12) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(13) "Municipal" means pertaining to a municipality, and "municipality" means any county, city, town, authority, district, or other political subdivision or public corporation of this state.

(14) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

(15) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

**Sec. 5.** RCW 47.68.230 and 1987 c 220 s 1 are each amended to read as follows:

It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States, and a current registration certificate issued by the secretary of transportation, if registration of the aircraft with the department of transportation is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman or



airwoman in the state unless ~~((he))~~ the person has an appropriate effective airman or airwoman certificate, permit, rating or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating or license is required by the United States and a current airman's or airwoman's registration certificate issued by the department of transportation as required by RCW 47.68.233 or section 3 of this act.

Where a certificate, permit, rating or license is required for an airman or airwoman by the United States or by RCW 47.68.233 or section 3 of this act, it shall be kept in his or her personal possession when he or she is operating within the state. Where a certificate, permit or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager or person in charge of any airport, or upon the reasonable request of any person.

*\*Sec. 6. RCW 47.68.240 and 1987 c 202 s 216 are each amended to read as follows:*

*Any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one ~~((hundred))~~ thousand dollars or by imprisonment for not more than ~~((thirty))~~ ninety days, or both such fine and imprisonment: PROVIDED, That any person violating any of the provisions of RCW 47.68.220 ~~((or 47.68.230))~~ shall be guilty of a gross misdemeanor which shall be punished by a fine of not more than ~~((one))~~ five thousand dollars or by imprisonment for not more than one year or by both ~~((in any proceeding brought in superior court and by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both in any proceedings brought in district court))~~. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.*

*\*Sec. 6 was vetoed, see message at end of chapter.*

*Sec. 7. RCW 47.68.250 and 1987 c 220 s 3 are each amended to read as follows:*

Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of four

dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the general fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: PROVIDED, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

The secretary shall be notified within one week of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

Passed the Senate March 8, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 6, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 6, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Substitute Senate Bill No. 5337 entitled:

"AN ACT Relating to the department of transportation's aeronautics division."

Section 6 of the bill amends RCW 47.68.240, addressing the penalties associated with violations of the aeronautics statutes in chapter 47.68 RCW.

Engrossed Substitute House Bill No. 1127, which is awaiting my approval, deals with licensing and penalty issues generally for motor vehicles, water craft and aircraft, and also amends RCW 47.68.240 to make the penalties uniform between all modes of transportation.

In this instance, I believe it is appropriate to defer to the Legislature's judgment in their efforts to have uniform penalties for all modes of transportation.

For these reasons, I have vetoed Section 6 of Substitute Senate Bill No. 5337.

With the exception of section 6, Substitute Senate Bill No. 5337 is approved."

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## CHAPTER 209

[Senate Bill 5107]

### FIREARMS OR WEAPONS POSSESSION ON SCHOOL PREMISES—ARREST WITHOUT WARRANT

Effective Date: 7/25/93

AN ACT Relating to arrest without warrant; and amending RCW 10.31.100.

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

**Sec. 1.** RCW 10.31.100 and 1988 c 190 s 1 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person

without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((9))~~ (9) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270 shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.100 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280 (1) (c) through (e).

(10) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((+0))~~ (11) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the police officer acts in good faith and without malice.

Passed the Senate April 17, 1993.

Passed the House April 6, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 210

[Substitute Senate Bill 5261]

### BACKGROUND CHECKS ON STATE-PAID PROVIDERS OF IN-HOME SERVICES

Effective Date: 7/25/93

AN ACT Relating to state background checks on persons providing services to physically disabled or mentally impaired persons; amending RCW 43.20A.710; and creating a new section.

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

**Sec. 1.** RCW 43.20A.710 and 1989 c 334 s 13 are each amended to read as follows:

The secretary shall investigate the conviction records, pending charges or disciplinary board final decisions of: (1) Persons being considered for state employment in positions directly responsible for the supervision, care, or treatment of children((, mentally ill persons)) or individuals with mental illness or ((developmentally disabled persons)) developmental disabilities; and (2) individual providers who are paid by the state for in-home services and hired by individuals with physical disabilities, developmental disabilities, mental illness, or mental impairment. The investigation may include an examination of state and national criminal identification data and the child abuse and neglect register established under chapter 26.44 RCW. The secretary shall provide the results of the state background check on individual providers to the individuals with physical disabilities, developmental disabilities, mental illness, or mental impairment who hired them and to their legal guardians, if any. The secretary shall use the information solely for the purpose of determining the character, suitability, and competence of these applicants except that in the case of individuals with physical disabilities, developmental disabilities, mental illness, or mental impairment who employ individual providers, the determination of character, suitability, and competence of applicants shall be made by the individual with a physical disability, developmental disability, mental illness, or mental impairment. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose. If necessary, persons may be employed on a conditional basis pending completion of the background investigation.

**NEW SECTION. Sec. 2.** This act applies prospectively except individuals who currently employ individual providers paid by the state may be given the option to request a state background check during reassessment for services.

Passed the Senate April 17, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 211

[Senate Bill 5349]

### EDUCATION CENTERS—NAME OF EDUCATIONAL CLINICS CHANGED TO

Effective Date: 7/25/93

AN ACT Relating to nomenclature of educational clinics; and amending RCW 28A.205.010, 28A.205.020, 28A.205.030, 28A.205.050, 28A.205.060, 28A.205.070, 28A.205.080, and 28A.205.090.

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

**Sec. 1.** RCW 28A.205.010 and 1990 c 33 s 180 are each amended to read as follows:

(1) As used in this chapter, unless the context thereof shall clearly indicate to the contrary:

~~((Educational clinic))~~ "Education center" means any private school operated on a profit or nonprofit basis which does the following:

(a) Is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation.

(b) Operates on a clinical, client centered basis. This shall include, but not be limited to, performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction therefor, and evaluation of each individual client's progress in his or her educational program.

(c) Conducts courses of instruction by professionally trained personnel certificated by the state board of education according to rules and regulations promulgated for the purposes of this chapter and providing, for certification purposes, that a year's teaching experience in an ~~((educational clinic))~~ education center shall be deemed equal to a year's teaching experience in a common or private school.

(2) For purposes of this chapter, basic academic skills shall include the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics; it shall not include courses of a vocational training nature and shall not include courses deemed nonessential to the accrediting of the common schools or the approval of private schools under RCW 28A.305.130.

(3) The state board of education shall certify an education ~~((clinic))~~ center only upon application and (a) determination that such school comes within the definition thereof as set forth in subsection (1) above and (b) demonstration on

the basis of actual educational performance of such applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program. Such certification may be withdrawn if the board finds that a ~~((elnie))~~ center fails to provide adequate instruction in basic academic skills. No ~~((educational-elnie))~~ education center certified by the state board of education pursuant to this section shall be deemed a common school under RCW 28A.150.020 or a private school for the purposes of RCW 28A.195.010 through 28A.195.050.

**Sec. 2.** RCW 28A.205.020 and 1990 c 33 s 181 are each amended to read as follows:

Only eligible common school dropouts shall be enrolled in a certified ~~((educational-elnie))~~ education center for reimbursement by the superintendent of public instruction as provided in RCW 28A.205.040. No person shall be considered an eligible common school dropout who (1) has completed high school, (2) who has not reached his or her thirteenth birthday or has passed his or her twentieth birthday, or (3) shows proficiency beyond the high school level in a test approved by the superintendent of public instruction to be given as part of the initial diagnostic procedure, or (4) until one month has passed after he or she has dropped out of any common school and the ~~((educational-elnie))~~ education center has received written verification from a school official of the common school last attended in this state that such person is no longer in attendance at such school, unless such ~~((elnie))~~ center has been requested to admit such person by written communication of the board of directors or its designee, of that common school, or unless such person is unable to attend a particular common school because of disciplinary reasons, including suspension and/or expulsion therefrom. The fact that any person may be subject to RCW 28A.225.010 through 28A.225.150, 28A.200.010, and 28A.200.020 shall not affect his or her qualifications as an eligible common school dropout under this chapter.

**Sec. 3.** RCW 28A.205.030 and 1990 c 33 s 182 are each amended to read as follows:

The superintendent of public instruction shall adopt, by rules, policies and procedures to permit a prior common school dropout to reenter at the grade level appropriate to such individual's ability: PROVIDED, That such individual shall be placed with the class he or she would be in had he or she not dropped out and graduate with that class, if the student's ability so permits notwithstanding any loss of credits prior to reentry and if such student earns credits at the normal rate subsequent to reentry.

Notwithstanding any other provision of law, any certified ~~((educational-elnie))~~ education center student, upon completion of an individual student program and irrespective of age, shall be eligible to take the general educational development test as given throughout the state.



**Sec. 4.** RCW 28A.205.050 and 1990 c 33 s 184 are each amended to read as follows:

In accordance with chapter 34.05 RCW, the administrative procedure act, the state board of education with respect to the matter of certification, and the superintendent of public instruction with respect to all other matters, shall have the power and duty to make the necessary rules and regulations to carry out the purpose and intent of this chapter.

Criteria as promulgated by the state board of education or superintendent of public instruction for determining if any (~~educational clinic~~) education center is providing adequate instruction in basic academic skills or demonstrating superior performance in student educational gains for funding under RCW 28A.205.040 shall be subject to review by four members of the legislature, one from each caucus of each house, including the chairs of the respective education committees.

**Sec. 5.** RCW 28A.205.060 and 1985 c 434 s 2 are each amended to read as follows:

The superintendent of public instruction shall prepare a report on (~~educational clinics~~) education centers that:

(1) Identifies a funding level that is adequate to fund the enrollment served by (~~educational clinics~~) education centers during the previous fiscal year;

(2) Identifies locales in the state which are served by (~~educational clinics~~) education centers but where demand for (~~educational clinic~~) education center services will support additional service, and recommends the funding level necessary to serve such demand;

(3) Identifies locales in the state which are not served by (~~educational clinics~~) education centers but where demand will support operation of (~~clinics~~) centers, and recommends the funding level necessary to serve such demand; and

(4) Identifies locales in the state that are either underserved or not served by existing public school programs for drop-outs or for drop-out prevention, but where demand will support such services and recommends the funding level necessary to serve such demand.

The report shall be submitted to the legislature by January 1 in the year following June 27, 1985, and updates of the report shall be submitted with each biennial budget request until such time as funding levels reach the levels recommended in subsections (2) and (3) of this section.

**Sec. 6.** RCW 28A.205.070 and 1990 c 33 s 185 are each amended to read as follows:

In allocating funds appropriated for (~~educational clinics~~) education centers, the superintendent of public instruction shall:

(1) Place priority upon stability and adequacy of funding for (~~educational clinics~~) education centers that have demonstrated superior performance as defined in RCW 28A.205.040(2).

(2) Initiate and maintain a competitive review process to select new or expanded ~~((elinie))~~ center programs in unserved or underserved areas. The criteria for review of competitive proposals for new or expanded education ~~((elinie))~~ center services shall include but not be limited to:

(a) The proposing organization shall have obtained certification from the state board of education as provided in RCW 28A.205.010;

(b) The cost-effectiveness of the proposal ~~((as judged by the criteria established in RCW 28A.97.100(1) and (2)))~~; and

(c) The availability of committed nonstate funds to support, enrich, or otherwise enhance the basic program.

(3) In selecting areas for new or expanded ~~((educational-elinies))~~ education center programs, the superintendent of public instruction shall consider factors including but not limited to:

(a) The proportion and total number of dropouts unserved by existing ~~((elinies))~~ center programs, if any;

(b) The availability within the geographic area of programs other than ~~((educational-elinies))~~ education centers which address the basic educational needs of dropouts; and

(c) Waiting lists or other evidence of demand for expanded ~~((educational elinie))~~ education center programs.

(4) In the event of any curtailment of services resulting from lowered legislative appropriations, the superintendent of public instruction shall issue pro rata reductions to all ~~((elinies))~~ centers funded at the time of the lowered appropriation. Individual ~~((elinies))~~ centers may be exempted from such pro rata reductions if the superintendent finds that such reductions would impair the ~~((elinie's))~~ center's ability to operate at minimally acceptable levels of service. In the event of such exceptions, the superintendent shall determine an appropriate rate for reduction to permit the ~~((elinie))~~ center to continue operation.

(5) In the event that an additional ~~((elinie or elinies))~~ center or centers become certified and apply to the superintendent for funds to be allocated from a legislative appropriation which does not increase from the immediately preceding biennium, or does not increase sufficiently to allow such additional ~~((elinie or elinies))~~ center or centers to operate at minimally acceptable levels of service without reducing the funds available to previously funded ~~((elinies))~~ centers, the superintendent shall not provide funding for such additional ~~((elinie or elinies))~~ center or centers from such appropriation.

**Sec. 7.** RCW 28A.205.080 and 1990 c 33 s 186 are each amended to read as follows:

The legislature recognizes that ~~((educational-elinies))~~ education centers provide a necessary and effective service for students who have dropped out of common school programs. ~~((Educational-elinies))~~ Education centers have demonstrated success in preparing such youth for productive roles in society and are an integral part of the state's program to address the needs of students who have dropped out of school. The superintendent of public instruction shall

distribute funds, consistent with legislative appropriations, allocated specifically for ~~((educational-clinics))~~ education centers in accord with chapter 28A.205 RCW. The legislature encourages school districts to explore cooperation with ~~((educational-clinics))~~ education centers.

**Sec. 8.** RCW 28A.205.090 and 1990 c 33 s 187 are each amended to read as follows:

The superintendent shall include the ~~((educational-clinics))~~ education centers program in the biennial budget request. Contracts between the superintendent of public instruction and the ~~((educational-clinics))~~ education centers shall include quarterly plans which provide for relatively stable student enrollment but take into consideration anticipated seasonal variations in enrollment in the individual ~~((clinics))~~ centers. Funds which are not expended by a ~~((clinic))~~ center during the quarter for which they were planned may be carried forward to subsequent quarters of the fiscal year. The superintendent shall make payments to the ~~((clinics))~~ centers on a monthly basis pursuant to RCW 28A.205.040.

Passed the Senate April 17, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 212

[Engrossed Substitute Senate Bill 5379]

### DAIRIES AND MILK PRODUCERS—REGULATION OF—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to milk and milk products; amending RCW 69.07.040 and 15.36.595; reenacting and amending RCW 15.36.115; and repealing RCW 15.36.580.

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

**Sec. 1.** RCW 15.36.115 and 1989 c 354 s 18 and 1989 c 175 s 48 are each reenacted and amended to read as follows:

(1) If the results of an antibiotic, pesticide, or other drug residue test under RCW 15.36.110 are above the actionable level established in the pasteurized milk ordinance published by the United States public health service and determined using procedures set forth in the current edition of "Standard Methods for the Examination of Dairy Products," a producer holding a grade A permit is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the permit on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt

requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW (~~and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580~~). At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, and, if so, shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.05 RCW. Tests performed for antibiotic, pesticide, or other drug residues by a state or certified industry laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic, pesticide, or other drug residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic, pesticide, or other drug residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Additional samples shall be taken as soon as possible and tested as soon as feasible for antibiotic, pesticide, or other drug residue by the department or a certified laboratory. After the notice has been received by the producer and the results of a test of such an additional sample indicate that residues are above the actionable level or levels referred to in subsection (1) of this section, the producer's milk may not be sold until a sample is shown to be below the actionable levels established for the residues.

**Sec. 2.** RCW 69.07.040 and 1992 c 160 s 3 are each amended to read as follows:

It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined by computing the gross annual sales for the accounting year immediately preceding the license

year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

If gross annual sales are:	The license fee is:
\$0 to \$50,000	\$50.00
\$50,001 to \$500,000	\$100.00
\$500,001 to \$1,000,000	\$200.00
\$1,000,001 to \$5,000,000	\$350.00
\$5,000,001 to \$10,000,000	\$500.00
Greater than \$10,000,000	\$750.00

Such application shall include the full name of the applicant for the license and the location of the food processing plant he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person is licensed under chapter 15.32 RCW or has a permit under chapter 15.36 RCW to conduct the same or a similar operation at the facility.

**Sec. 3.** RCW 15.36.595 and 1989 c 175 s 49 are each amended to read as follows:

(1) The director of agriculture shall adopt rules imposing a civil penalty for violations of the standards for component parts of fluid dairy products which are established by RCW 15.36.030 or adopted pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand dollars and shall be such as is necessary to achieve proper enforcement of the standards. The rules shall be adopted before January 1, 1987, and shall become effective on July 1, 1987.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW (~~and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580~~). At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.05 RCW. Tests performed for the component parts of milk products by a state laboratory of a milk sample collected by a department official shall be admitted as prima facie evidence of the amounts of milk components in the product.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department.

(4) All penalties received or recovered from violations of this section shall be remitted by the violator to the department and deposited in the revolving fund of the Washington state dairy products commission. One-half of the funds received shall be used for purposes of education with the remainder one-half to be used for dairy processing or marketing research, or both. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department.

**NEW SECTION. Sec. 4.** RCW 15.36.580 and 1989 c 354 s 26, 1987 c 202 s 175, 1981 c 67 s 17, & 1961 c 11 s 15.36.580 are each repealed.

Passed the Senate April 17, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 213

[Senate Bill 5441]

## REHABILITATION SERVICES FOR DISABLED PERSONS—UPDATE OF STATUTES

Effective Date: 7/25/93

AN ACT Relating to updating statutes for rehabilitation services for individuals with disabilities pursuant to changes in federal law and regulations; amending RCW 74.29.005, 74.29.010, 74.29.020, 74.29.080, and 74.29.037; and repealing RCW 74.29.105, 74.29.100, 74.29.110, and 74.29.025.

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

**Sec. 1.** RCW 74.29.005 and 1969 ex.s. c 223 s 28A.10.005 are each amended to read as follows:

The purposes of this chapter are (1) to rehabilitate ~~((vocationally handi-capped persons))~~ individuals with disabilities who have a barrier to employment so that they may prepare for and engage in a gainful occupation; (2) to provide persons with physical ~~((or))~~, mental, or sensory disabilities with a program of services which will result in greater opportunities for them to enter more fully into ~~((the))~~ life ~~((of))~~ in the community; (3) to promote activities which will assist ~~((the vocationally handicapped))~~ individuals with disabilities to ~~((reach their fullest potential))~~ become self-sufficient and self-supporting; and (4) to encourage and develop ~~((facilities))~~ community rehabilitation programs, job support services, and other resources needed by ~~((the handicapped))~~ individuals with disabilities.

**Sec. 2.** RCW 74.29.010 and 1970 ex.s. c 18 s 52 are each amended to read as follows:

(1) ~~((“Handicapped person”))~~ “Individual with disabilities” means ~~((any))~~ an individual:

(a) Who has a physical ~~((or))~~, mental, or sensory disability, which ~~((constitutes a substantial handicap to employment, of such a nature that))~~ requires vocational rehabilitation services ~~((may reasonably be expected to render him fit))~~ to prepare for, enter into, engage in ~~((or))~~, retain, or engage in and retain gainful ~~((occupation))~~ employment consistent with his or her capacities and abilities; or

(b) Who ~~((because of lack of social competence or mobility, experience, skills, training, or other factors, is in need of vocational rehabilitation services in order to become fit to engage in a gainful occupation or to attain or maintain a maximum degree of self-support or self-care; or~~

~~((or))~~ For whom vocational rehabilitation services are necessary to determine rehabilitation potential)) has a physical, mental, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of vocational rehabilitation or independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment.

(2) “Individual with severe disabilities” means an individual with disabilities:

(a) Who has a physical, mental, or sensory impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of employment outcome, and/or independence and participation in family or community life;

(b) Whose rehabilitation can be expected to require multiple rehabilitation services over an extended period of time; and

(c) Who has one or more physical, mental, or sensory disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and rehabilitation needs to cause comparable substantial functional limitation.

(3) "Physical (~~(or)~~), mental, or sensory disability" means a physical (~~(or)~~), mental, or sensory condition which materially limits, contributes to limiting or, if not corrected or accommodated, will probably result in limiting an individual's activities or functioning. (~~The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.~~

(3) "~~Vocational~~) (4) "Rehabilitation services" means goods or services provided (~~handicapped persons to enable such persons to be fit for gainful occupation or~~) to: (a) Determine eligibility and rehabilitation needs of individuals with disabilities, and/or (b) enable individuals with disabilities to attain or (~~maintain a maximum degree of self-support or self-care and includes every type of goods and services for which~~) retain employment and/or independence, and/or (c) contribute substantially to the rehabilitation of a group of individuals with disabilities. To the extent federal funds are available (~~for vocational rehabilitation purposes, including~~), goods and services may include, but are not limited to, the establishment, construction, development, operation and maintenance of (~~workshops and~~) community rehabilitation (~~facilities~~) programs and independent living centers, as well as special demonstration projects.

(~~(4)~~) "Self-care") (5) "Independence" means a reasonable degree of restoration from dependency upon others to self-direction and greater control over circumstances of one's life for personal needs and care and includes but is not limited to the ability to live in (~~own~~) one's home(~~, rather than requiring nursing home care and care for self rather than requiring attendant care~~).

(~~(5)~~) (6) "Job support services" means ongoing goods and services provided after vocational rehabilitation, subject to available funds, that support



an individual with severe disabilities in employment. Such services include, but are not limited to, extraordinary supervision or job coaching.

(7) "State agency" means the department of social and health services.

Sec. 3. RCW 74.29.020 and 1969 ex.s. c 223 s 28A.10.020 are each amended to read as follows:

Subject to available funds, and consistent with federal law and regulations the state agency shall:

(1) Develop state-wide rehabilitation programs;

(2) Provide vocational rehabilitation services, independent living services, and/or job support services to ~~((handicapped persons, including the placing of such persons in gainful occupations))~~ individuals with disabilities or severe disabilities;

~~((2))~~ (3) Disburse all funds provided by law and may receive, accept and disburse such gifts, grants, conveyances, devises and bequests of real and personal property from public or private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out ~~((vocational))~~ rehabilitation services as specified by law and the regulations of the state agency; and may sell, lease or exchange real or personal property according to the terms and conditions thereof. Any money so received shall be deposited in the state treasury for investment, reinvestment or expenditure in accordance with the conditions of its receipt and RCW 43.88.180;

~~((3))~~ (4) Appoint and fix the compensation and prescribe the duties, of the personnel necessary for the administration of this chapter, unless otherwise provided by law;

~~((4))~~ (5) Make exploratory studies, ~~((make))~~ do reviews, and ~~((do))~~ research relative to ~~((vocational))~~ rehabilitation;

(6) Coordinate with the state rehabilitation advisory council and the state independent living advisory council on the administration of the programs;

(7) Report to the governor and to the legislature on the administration of this chapter, as requested; and

(8) Adopt rules, in accord with chapter 34.05 RCW, necessary to carry out the purposes of this chapter.

Sec. 4. RCW 74.29.080 and 1983 1st ex.s. c 41 s 16 are each amended to read as follows:

(1) Determination of eligibility and need for rehabilitation services and determination of eligibility for job support services shall be made by the state agency for each individual according to its established rules, policies, procedures, and standards.

(2) The state agency may purchase, from any source, ~~((by contract, vocational))~~ rehabilitation services and job support services for ~~((handicapped persons, payments for such services to be made subject to procedures and fiscal controls approved by the director of financial management. The performance of~~

and payment for such services shall be subject to post-audit review by the state auditor.

~~(2) Notwithstanding any other provision of RCW 74.29.080, 74.29.100, 74.29.105 and 74.29.110, when the state agency determines that a mentally retarded, severely handicapped, or disadvantaged person can reasonably be expected to benefit from, or in his best interests reasonably requires extended sheltered employment or supervised work furnished by an approved nonprofit organization, the state agency is authorized to contract with such organization for the furnishing of such sheltered employment or supervised work to such mentally retarded, severely handicapped, or disadvantaged person.~~

~~(3) The determination of eligibility for such service shall be made for each individual by the state agency. The mentally retarded, severely handicapped and disadvantaged individuals served under this law shall be construed to be poor or infirm within the meaning of the term as used in the state Constitution)) individuals with disabilities, subject to the individual's income or other resources that are available to contribute to the cost of such services.~~

~~((4)) (3) The state agency shall maintain ((a) registers of ((nonprofit) individuals and organizations which ((it has inspected and certified as meeting)) meet required standards and ((as qualifying to serve the needs of such mentally retarded, severely handicapped, or disadvantaged persons)) qualify to provide rehabilitation services and job support services to individuals with disabilities. Eligibility of such individuals and organizations ((to receive the funds hereinbefore specified)) shall be based upon standards and criteria promulgated by the state agency.~~

~~((5) The state agency is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section.))~~

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

- (1) RCW 74.29.105 and 1969 c 105 s 3;
- (2) RCW 74.29.100 and 1970 ex.s. c 15 s 24 & 1969 c 105 s 1;
- (3) RCW 74.29.110 and 1970 ex.s. c 15 s 25 & 1969 c 105 s 4; and
- (4) RCW 74.29.025 and 1977 c 75 s 18 & 1969 ex.s. c 223 s 28A.10.025.

Sec. 6. RCW 74.29.037 and 1969 ex.s. c 223 s 28A.10.037 are each amended to read as follows:

The state agency ~~((shall make available vocational rehabilitation services to the departments of institutions, labor and industries, public assistance, and employment security, and other state or other public agencies, in accordance with)) may establish cooperative agreements ~~((between the)) with other state ((agency)) and ~~((the respective)) local agencies.~~~~~~

Passed the Senate February 24, 1993.  
Passed the House April 17, 1993.  
Approved by the Governor May 6, 1993.  
Filed in Office of Secretary of State May 6, 1993.

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**CHAPTER 214**

[Senate Bill 5541]

**RAPE—STATUTE OF LIMITATIONS EXTENDED****Effective Date: 7/25/93**

AN ACT Relating to statute of limitations for sexual offenses; amending RCW 9A.04.080; and prescribing penalties.

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

**Sec. 1.** RCW 9A.04.080 and 1989 c 317 s 3 are each amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Arson if a death results.

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later:

((#)) RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080, ((or)) 9A.44.100(1)(b)((-or

(ii) ~~If the victim was under the age of fourteen years of age at the time of the commission of the offense, RCW 9A.44.040, 9A.44.050)), or 9A.64.020.~~

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) No other felony may be prosecuted more than three years after its commission.

(h) No gross misdemeanor may be prosecuted more than two years after its commission.

(i) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Passed the Senate March 9, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 215

[Senate Bill 5578]

### FISHING LICENSES—AREAS WHERE PERSONAL USE LICENSE NOT REQUIRED CLARIFIED

Effective Date: 7/25/93

AN ACT Relating to clarifying the areas where a personal use fishing license is not required; and amending RCW 75.25.090.

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

**Sec. 1.** RCW 75.25.090 and 1989 c 305 s 5 are each amended to read as follows:

(1) A personal use license is required for all persons other than persons under fifteen years of age to fish for, take, or possess food fish for personal use from state waters or offshore waters. A personal use license is not required

under this section to fish for, take, or possess carp (~~and~~), sturgeon in the Columbia river above Chief Joseph Dam, smelt, or albacore.

(2) The fees for annual personal use licenses are:

(a) For a resident fifteen years of age or older and under seventy years of age, three dollars; and

(b) For a nonresident fifteen years of age or older, ten dollars.

(3) The fees for two-consecutive-day personal use licenses are:

(a) For food fish other than sturgeon, three dollars; and

(b) For sturgeon only, three dollars.

Passed the Senate March 15, 1993.

Passed the House April 12, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 216

[Substitute Senate Bill 5606]

### STATE AUDITOR AUTHORIZED TO AUDIT FUNDS UNDER CONTROL OF STATE AGENCIES AND SUBDIVISIONS

Effective Date: 7/25/93

AN ACT Relating to auditing funds under the control of state agencies; and adding a new section to chapter 43.09 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.09 RCW to read as follows:

As part of the routine audits of state agencies, the state auditor shall audit all revolving funds, local funds, and other state funds and state accounts that are not managed by or in the care of the state treasurer and that are under the control of state agencies, including but not limited to state departments, boards, and commissions. In conducting the audits of these funds and accounts, the auditor shall examine revenues and expenditures or assets and liabilities, accounting methods and procedures, and recordkeeping practices. In addition to including the results of these examinations as part of the routine audits of the agencies, the auditor shall report to the legislature on the status of all such funds and accounts that have been examined during the preceding biennium and any recommendations for their improved financial management. Such a report shall be filed with the legislature within five months of the end of each biennium regarding the funds and accounts audited during the biennium. The first such report shall be filed by December 1, 1993, regarding any such funds and accounts audited during the 1991-93 biennium.

Passed the Senate April 18, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 217

[Engrossed Substitute Senate Bill 5615]

### TEACHER RECRUITMENT—PROFESSIONAL DEVELOPMENT CENTERS' DUTIES

Effective Date: 7/25/93

AN ACT Relating to teacher recruitment; amending RCW 28A.300.260; adding a new section to chapter 28A.415 RCW; and recodifying RCW 28A.300.260.

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

**Sec. 1.** RCW 28A.300.260 and 1991 c 252 s 1 are each amended to read as follows:

(1) The teachers recruiting future teachers program is created within the ~~((office of the superintendent of public instruction))~~ professional development centers located in educational service districts to help enlarge the pool of qualified high school students who are motivated to become teachers.

(2) Subject to funds being appropriated, the ~~((superintendent of public instruction))~~ professional development centers shall:

(a) Promote and replicate the teachers recruiting future teachers model program; and

(b) ~~((Promote and expand the annual education week program on the campus of Central Washington University or on the campuses of other interested state institutions of higher education))~~ Place special emphasis on the recruitment of future teachers who are representative of the diversity of public school populations; and

(c) Place emphasis on the recruitment of future teachers who will teach mathematics, science and technology.

~~((3) The superintendent of public instruction, working with the executive director of the teachers recruiting future teachers program and the director of the education week program at Central Washington University, shall adopt rules as necessary under chapter 34.05 RCW to implement the provisions of this section.))~~

**NEW SECTION. Sec. 2.** RCW 28A.300.260 as amended by this act is recodified in chapter 28A.415 RCW.

Passed the Senate March 11, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 218

[Senate Bill 5695]

GENERAL EDUCATIONAL DEVELOPMENT TEST—ELIGIBILITY  
TO TAKE—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to the certificate of educational competence; amending RCW 28A.305.190 and 28A.205.030; and adding a new section to chapter 28B.50 RCW.

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

**Sec. 1.** RCW 28A.305.190 and 1991 c 116 s 5 are each amended to read as follows:

The state board of education shall adopt rules (~~(and regulations)~~) governing the (~~conditions by and under which a certificate of educational competence may be issued to a person nineteen years of age or older, or to~~) eligibility of a child ((fifteen)) sixteen years of age and under nineteen years of age to take the general educational development test if the child provides a substantial and warranted reason for leaving the regular high school education program, or if the child was home-schooled.

**Sec. 2.** RCW 28A.205.030 and 1990 c 33 s 182 are each amended to read as follows:

The superintendent of public instruction shall adopt, by rules, policies and procedures to permit a prior common school dropout to reenter at the grade level appropriate to such individual's ability: PROVIDED, That such individual shall be placed with the class he or she would be in had he or she not dropped out and graduate with that class, if the student's ability so permits notwithstanding any loss of credits prior to reentry and if such student earns credits at the normal rate subsequent to reentry.

Notwithstanding any other provision of law, any certified educational clinic student sixteen years of age or older, upon completion of an individual student program (~~(and irrespective of age)~~), shall be eligible to take the general educational development test as given throughout the state.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 28B.50 RCW to read as follows:

Subject to rules adopted by the state board of education under RCW 28A.305.190, the state board for community and technical colleges shall adopt rules governing the eligibility of persons sixteen years of age and older to take the general educational development test, rules governing the administration of the test, and rules governing the issuance of a certificate of educational competence to persons who successfully complete the test. Certificates of educational competence issued under this section shall be issued in such form and substance as agreed upon by the state board for community and technical colleges and superintendent of public instruction.

Passed the Senate March 17, 1993.  
Passed the House April 17, 1993.  
Approved by the Governor May 6, 1993.  
Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 219

[Substitute Senate Bill 5839]

### CONSOLIDATED STATE AGENCY MAIL SERVICE AUTHORIZED

Effective Date: 7/1/93

AN ACT Relating to mail functions of state government; adding new sections to chapter 43.19 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** It is the intent of the legislature to consolidate mail functions for state government in a manner that will provide timely, effective, efficient, and less-costly mail service for state government.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.19 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and section 3 of this act.

(1) "Consolidated mail service" means incoming, outgoing, and internal mail processing.

(2) "Department" means the department of general administration.

(3) "Director" means the director of the department of general administration.

(4) "Agency" means:

(a) The office of the governor; and

(b) Any office, department, board, commission, or other separate unit or division, however designated, of the state government, together with all personnel thereof: Upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature; and that has as its chief executive officer a person or combination of persons such as a commission, board, or council, by law empowered to operate it, responsible either to: (i) No other public officer or (ii) the governor.

(5) "Incoming mail" means mail, packages, or similar items received by an agency, through the United States postal service, private carrier services, or other courier services.

(6) "Outgoing mail" means mail, packages, or similar items processed for agencies to be sent through the United States postal service, private carrier services, or other courier services.

(7) "Internal mail" means interagency mail, packages, or similar items that are delivered or to be delivered to a state agency, the legislature, the supreme court, or the court of appeals, and their officers and employees.



**NEW SECTION.** Sec. 3. A new section is added to chapter 43.19 RCW to read as follows:

The director shall establish a consolidated mail service to handle all incoming, outgoing, and internal mail in the 98504 zip code area or successor zip code areas for agencies in the Olympia, Tumwater, and Lacey area. The director may include additional geographic areas within the consolidated mail service, based upon his or her determination. The department shall also provide mail services to legislative and judicial agencies in the Olympia, Tumwater, and Lacey area upon request.

The director may bill state agencies and other entities periodically for mail services rendered.

**NEW SECTION.** Sec. 4. All employees of any state agency who are employed exclusively or principally in performing the powers, duties, or functions assigned to the department pursuant to section 3 of this act, may be transferred to the department of general administration. The office of financial management shall determine the number of employees to be transferred for efficient operation of the mail service. Upon such transfer to the department of general administration, such employees shall continue to be governed by the provisions of chapter 41.06 RCW, the state civil service law, and shall retain their permanent or probationary status together with all rights, privileges, and immunities attaching thereto.

**NEW SECTION.** Sec. 5. The department, in cooperation with the office of financial management, shall review current and prospective needs of state agencies for any equipment to process mail throughout state government. If after such consultation, the department should find that the economy, efficiency, or effectiveness of state government would be improved by such a transfer or other disposition, then the property shall be transferred or otherwise disposed.

After making such finding, the department shall direct the transfer of existing state property, facilities, and equipment pertaining to the consolidated mail service or United States postal service. Any dispute concerning the benefits in state governmental economy, efficiency, and effectiveness shall be resolved by the office of financial management.

**NEW SECTION.** Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 18, 1993.

Passed the House April 7, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 220

[Senate Bill 5835]

CONVENTION, ART, OR PUBLIC CENTER CONTROLLED BY  
PUBLIC CORPORATION—EXEMPTION FROM IN LIEU EXCISE TAX

Effective Date: 7/25/93

AN ACT Relating to the taxation of public authorities; and amending RCW 35.21.755.

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

**Sec. 1.** RCW 35.21.755 and 1990 c 131 s 1 are each amended to read as follows:

(1) A public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 shall receive the same immunity or exemption from taxation as that of the city, town, or county creating the same: PROVIDED, That, except for (a) any property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites or (b) any property owned ~~((or))~~, operated, or controlled by a public corporation that is used primarily for low-income housing, or that is used as a convention center, performing arts center, public assembly hall, or public meeting place, any such public corporation, commission, or authority shall pay to the county treasurer an annual excise tax equal to the amounts which would be paid upon real property and personal property devoted to the purposes of such public corporation, commission, or authority were it in private ownership, and such real property and personal property is acquired and/or operated under RCW 35.21.730 through 35.21.755, and the proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership: PROVIDED FURTHER, That the provisions of chapter 82.29A RCW shall not apply to property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites and which is controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1987: AND PROVIDED FURTHER, That property within a special review district established by ordinance prior to January 1, 1976, or property which is listed on any federal or state register of historical sites and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1976, shall receive the same immunity or exemption from taxation as if such property had been within a district listed on any such federal or state register of historical sites as of January 1, 1976, and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 which was in existence prior to January 1, 1976.

(2) As used in this section:

(a) "Low-income" means a total annual income, adjusted for family size, not exceeding fifty percent of the area median income.

(b) "Area median income" means:

- (i) For an area within a standard metropolitan statistical area, the area median income reported by the United States department of housing and urban development for that standard metropolitan statistical area; or
- (ii) For an area not within a standard metropolitan statistical area, the county median income reported by the department of community development.

Passed the Senate March 12, 1993.

Passed the House April 12, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 221

[Substitute Senate Bill 5849]

### DAIRY ANIMAL FEEDING OPERATIONS—COORDINATED WASTE MANAGEMENT PLAN REQUIRED

Effective Date: 7/25/93

AN ACT Relating to the regulation of dairy animal feeding operations; and adding a new chapter to Title 90 RCW.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that there is a need to establish a clear and understandable process that provides for the proper and effective management of dairy waste that affects the quality of surface or ground waters in the state of Washington. The legislature finds that there is a need for a program that will provide a stable and predictable business climate upon which dairy farms may base future investment decisions.

The legislature finds that federal regulations require a permit program for dairies over seven hundred head of mature cows and, other specified dairy farms that directly discharge into waters or are otherwise significant contributors of pollution. The legislature finds that significant work has been ongoing over a period of time and that the intent of this chapter is to take the consensus that has been developed and place it into statutory form.

It is also the intent of this chapter to recognize the existing working relationships between conservation districts, the conservation commission, and the department of ecology in protecting water quality of the state. A further purpose of this chapter is to provide statutory recognition of the coordination of the functions of conservation districts, the conservation commission, and the department of ecology pertaining to development of dairy waste management plans for the protection of water quality.

**NEW SECTION.** **Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(2) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(3) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under section 4 of this act or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(4) "Dairy animal feeding operation" means a lot or facility where the following conditions are met;

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(5) "Department" means the department of ecology under chapter 43.21A RCW.

(6) "Director" means the director of the department of ecology, or his or her designee.

**NEW SECTION. Sec. 3.** (1) The director of the department of ecology may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**NEW SECTION.** Sec. 4. Upon receiving a complaint or upon its own determination that a dairy animal feeding operation is a likely source of water quality degradation, the department may investigate a dairy animal feeding operation to determine whether the operation is discharging directly pollutants or recently has discharged directly pollutants into surface or ground waters of the state. The department shall investigate a written complaint filed with the department within ten days and shall make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. A copy of the findings shall be provided upon request to the dairy animal feeding operation.

Those dairy animal feeding operations that are determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information if immediate corrective actions are not possible, shall be designated as a concentrated dairy animal feeding operation and shall be subject to the provisions of this chapter.

**NEW SECTION.** Sec. 5. Enforcement actions and administrative orders issued by the department of ecology may be appealed to the pollution control hearings board in accordance with the provisions of chapter 43.21B RCW.

**NEW SECTION.** Sec. 6. (1) The department has the following duties:

- (a) Identify existing or potential water quality problems resulting from dairy farms;
- (b) Receive, process, and verify complaints concerning discharge of pollutants from all dairy farms regardless of size;
- (c) Determine if a dairy-related water quality problem requires immediate corrective action under the Washington state water pollution control laws, chapter 90.48 RCW, the Washington state water quality standards adopted under chapter 90.48 RCW, or other authorities. The department shall maintain the lead enforcement responsibility;
- (d) Administer and enforce national pollutants discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations, and administer state laws;
- (e) Appoint representatives, including dairy industry representatives, to participate in the compliance review committee that will annually review and update policy and disseminate information as needed;
- (f) Encourage communication between local department personnel and the appropriate conservation district personnel;
- (g) Encourage the use of federal soil conservation service standards and specifications in designing best management practices for dairy waste management plans to protect water quality;

(h) Provide to the commission an annual report of dairy waste pollution enforcement activities.

(2) The department may not delegate its responsibilities in enforcement.

**NEW SECTION. Sec. 7.** (1) If the department determines that the operator of a dairy animal feeding operation has the means to correct a water quality problem in a manner that will prevent future contamination and does so promptly and such correction is maintained, the department shall cease pursuit of the complaint.

(2) If the department determines that an unresolved water quality problem from a dairy animal feeding operation requires immediate corrective action, the department shall notify the operator and the district in which the problem is located.

(3) If immediate action is not necessary by the department, the handling of complaints will differ depending on the amount of information available and the compliance option selected by the conservation district involved.

(a) When the name and address of the party against whom the complaint was registered are known:

(i) Districts operating at levels 1 and 2 will receive a copy of complaint information, and compliance letter if one was sent out.

(ii) Districts operating at levels 3 and 4 will receive a copy of complaint information and the letter sent by the department to the operator informing the operator of the complaint and providing the operator with the opportunity to work with the conservation district on a voluntary basis.

(b) The department and the conservation district will work together at the local level to resolve complaints when the name and address of the party against whom the complaint was registered are unknown.

**NEW SECTION. Sec. 8.** (1) The conservation district has the following duties:

(a) Adopt and annually update the water quality section in the conservation district dairy waste management plan;

(b) As part of the district annual report, include a water quality progress report on dairy waste management activities conducted that are related to this chapter;

(c) Encourage communication between the conservation district personnel and local department personnel;

(d) Adopt and carry out a compliance option from level 1, level 2, level 3, or level 4.

(2) The district's capability to carry out its responsibilities in the four levels of compliance is contingent upon the availability of funding and resources to implement a dairy waste management program.

**NEW SECTION. Sec. 9.** (1) The conservation commission has the following duties:

(a) Forward to the department the dairy waste management plan progress reports;

(b) Provide assistance as may be appropriate to the conservation districts in the discharge of their responsibilities as management agencies in dairy waste management program implementation;

(c) Provide coordination for conservation district programs at the state level through special arrangements with appropriate federal and state agencies;

(d) Inform conservation districts of activities and experiences of other conservation districts relative to agricultural water quality protection, and facilitate an interchange of advice, experience, and cooperation between the districts;

(e) Encourage communication between the conservation district personnel and local department personnel;

(f) Appoint conservation district representatives to serve on the compliance review committee with advice of the Washington association of conservation districts;

(g) Appoint a commission representative to participate on the compliance review committee that will annually review and update policy and disseminate information as needed;

(h) Work with the department to provide communication outreach to representatives of agricultural and environmental organizations to receive feedback on implementation of this chapter.

(2) The commission's capability to carry out its responsibilities under this chapter is contingent upon the availability of funding and resources to implement a dairy waste management program.

**NEW SECTION. Sec. 10.** Conservation districts shall adopt one of the following compliance levels:

(1) Level 1 - Information/education/technical assistance.

The conservation district will serve as a local source of information on dairy waste management plan implementation programs. The conservation district will promote plans and efforts to improve water quality and explain the benefits of participating in available implementation plans through news releases and other media for the general public; programs for schools; presentations to groups and civic organizations; workshops; training sessions; or other appropriate means. The conservation district will provide technical assistance upon request.

The department will respond to complaints that involve water quality problems caused by dairy animal feeding operations. The department will work with the operator to bring the operation into compliance with federal statutes, federal regulations, and applicable state laws. If immediate action is deemed necessary, the department will pursue the appropriate actions that may include enforcement against the responsible parties. The department will advise the operator of the information and technical assistance available through the conservation district. The department will notify the conservation district of the operator's need for information or technical assistance.

(2) Level 2 - Information/education, problem assessment, and handling complaints.

The conservation district will carry out programs described in level 1. In addition, the conservation district will inventory dairy waste related water quality problems defined in the water quality section of its annual plan. The conservation district will prioritize problems and work to apply voluntary solutions to the highest priority problems within available resources utilizing information/education, technical assistance, and incentives. Response to complaint - The conservation district will make an appointment for an on-site contact with the alleged violator within ten working days and determine if the operator desires to work with the conservation district. If the operator wishes conservation district assistance, within six months the conservation district will develop a plan with the individual operator which includes a schedule for application of best management practices. The operator will have eighteen months, or by agreement, an approved schedule with an alternative time period to implement the plan. If hardships occur, the operator may request an extension of the implementation schedule subject to concurrence of the department.

The conservation district in responding to complaints will report progress, or the need for further department technical expertise, to the individual involved and the department. A copy of the plan will be made available to the department. If the district offers assistance and the individual involved refuses to cooperate or ceases to work with the conservation district, the district will notify the department.

The conservation district will refer all alleged water quality violations, or individuals who wish to make a complaint to the department.

The department will investigate and seek resolution of all complaints that appear to need immediate action and refer all other complaints concerning dairy animal feeding operations to the appropriate conservation district. The department will keep a record of those complaints. When a referral is made by a conservation district, due to a continuing unresolved water quality problem, the department will take appropriate action and advise the conservation district of the action taken.

(3) Level 3 - Information/education, problem assessment, handling complaints, and assisting in compliance.

The conservation district will carry out programs described in levels 1 and 2. In addition, the conservation district will actively follow up those problems and complaints deemed highest priority by the conservation district within sixty days after the initial contact. The complaint referral follow-up will include:

- (a) Meet with the owner/operator;
- (b) Make an on-site assessment of the nature and extent of the problem, if so desired by the owner/operator;
- (c) Notify within twenty-five working days the department that the owner/operator has or has not requested assistance from the conservation district;



(d) Assist the owner/operator in the development of a dairy waste management plan within six months. Implementation is to be completed within eighteen months, or by agreement and approved schedule, with an alternative time period to implement the plan. If hardships occur, the operator may request an extension of the planning or implementation schedule with concurrence of the department;

(e) Provide such technical assistance as is necessary and available during plan implementation;

(f) Monitor plan implementation;

(g) Notify the department within twenty-five working days in the event that the owner/operator either refuses to cooperate in the development of a dairy waste management plan that will correct the problems identified during the on-site assessment, or fails to implement the plan within the designated time period;

(h) By June 30 of each year, submit a formal summary of progress on alleged water quality violations referred to the conservation district by the department.

The department will investigate and seek resolution of all complaints that appear to need immediate action.

The department will pursue all activities addressed under level 2. Except that on those sites where the conservation district is making progress on water quality problems caused from dairy animal feeding operations and is reporting the same to the department, the department will hold any related enforcement actions in abeyance until the problem is solved, or the operator refuses to cooperate further. The department shall continue to pursue any immediate action where required.

(4) Level 4 - Compliance.

The conservation district will carry out programs described in levels 1 through 3. In addition, the conservation district will provide information and direct support for resolving water quality actions which may be filed by the department pursuant to its statutory authority.

Information and support include the following:

(a) A field site tour to provide information and attempt to resolve the issues;

(b) Provision for access to public information in a conservation district's files, and if appropriate, in-house documents such as field notes, photographs, and in-house memoranda. Access is subject to applicable laws and regulations;

(c) Department interviews with appropriate conservation district personnel regarding a site under enforcement;

(d) Assistance and attendance, if appropriate, at negotiation sessions with responsible parties;

(e) Affidavits or testimony necessary to document the case.

The department will pursue all activities as addressed in level 3, except where the conservation district has been involved, the department will utilize the information and support offered by the conservation district to resolve the matter.

NEW SECTION. Sec. 11. A party acting under this chapter is not liable for another party's actions under this chapter.

NEW SECTION. Sec. 12. The department may adopt rules as necessary to implement this chapter.

NEW SECTION. Sec. 13. Nothing in this chapter shall affect the department's authority or responsibility to administer or enforce the national pollutant discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations or to administer the provisions of chapter 90.48 RCW.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act shall constitute a new chapter in Title 90 RCW.

Passed the Senate April 18, 1993.

Passed the House April 12, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 222

[Senate Bill 5883]

### RUNNING START PROGRAM—REVISED FUNDING PROCEDURES

Effective Date: 9/1/93

AN ACT Relating to high school students enrolled in community or technical colleges; amending RCW 28A.600.310; and providing an effective date.

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

Sec. 1. RCW 28A.600.310 and 1990 1st ex.s. c 9 s 402 are each amended to read as follows:

(1) Eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grades may apply to a community college or ~~((vocationa-technical-institute))~~ technical college to enroll in courses or programs offered by the community college or ~~((vocationa-technical-institute))~~ technical college. If a community college or ~~((vocationa-technical-institute))~~ technical college accepts a secondary school pupil for enrollment under this section, the community college or ~~((vocationa-technical-institute))~~ technical college shall send written notice to the pupil~~((;))~~ and the pupil's school district~~((; and the superintendent of public instruction))~~ within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2) The pupil's school district shall transmit to the community college or ~~((vocationa-technical-institute a sum not exceeding the amount of state funds under RCW 28A.150.260 generated by a full-time equivalent student and in proportion to the number of hours of instruction the pupil receives at the community college or vocational-technical institute and at the high school))~~

technical college an amount per each full-time equivalent college student at state-wide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The community college or ((vocational-technical institute)) technical college shall not require the pupil to pay any other fees. The funds received by the community college or ((vocational-technical institute)) technical college from the school district shall not be deemed tuition or operating fees and may be retained by the community college or ((vocational-technical institute)) technical college. A student enrolled under this subsection shall not be counted for the purpose of determining any enrollment restrictions imposed by the state on the community colleges.

NEW SECTION. Sec. 2. This act shall take effect September 1, 1993.

Passed the Senate April 19, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 223

[Senate Bill 5903]

### HIGH SCHOOL STUDENTS IN COMMUNITY OR TECHNICAL COLLEGE—ALLOCATION OF FUNDS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to the allocation of funds for high school students enrolled in community and technical college programs; and adding a new section to chapter 28A.150 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.150 RCW to read as follows:

The basic education allocation, including applicable vocational entitlements and handicapped student program money, generated under this chapter and under state appropriation acts by school districts for students enrolled in a technical college program established by an interlocal agreement under RCW 28B.50.533 shall be allocated in amounts as determined by the superintendent of public instruction to the serving college rather than to the school district, unless the

college chooses to continue to receive the allocations through the school districts. This section does not apply to students enrolled in the running start program established in RCW 28A.600.310.

Passed the Senate April 19, 1993.

Passed the House April 12, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

## CHAPTER 224

[Engrossed Senate Bill 5917]

### RAIL FREIGHT SERVICES—STATE PARTICIPATION—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to rail freight service; amending RCW 47.76.010, 47.76.020, 47.76.130, 47.76.030, 47.76.140, 47.76.160, 47.76.040, 47.76.050, 47.76.060, 47.76.070, 47.76.080, 47.76.090, and 47.76.170; adding a new section to chapter 47.30 RCW; adding new sections to chapter 47.76 RCW; recodifying RCW 47.76.010, 47.76.110, 47.76.020, 47.76.120, 47.76.130, 47.76.030, 47.76.140, 47.76.160, 47.76.040, 47.76.050, 47.76.060, 47.76.070, 47.76.080, 47.76.090, 47.76.170, and 47.76.190; and repealing RCW 47.76.100 and 47.76.150.

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

**Sec. 1.** RCW 47.76.010 and 1983 c 303 s 4 are each amended to read as follows:

The legislature finds that ((the)) a balanced multimodal transportation system is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. Freight rail systems are important elements of this multimodal system. Washington's economy relies heavily upon the freight rail system to ensure movement of the state's agricultural, chemical, and natural resource products to local, national, and international markets. Since 1970, Washington has lost nearly one-third of its five thousand two hundred rail miles to abandonment and bankruptcies, leaving approximately three thousand four hundred rail miles.

Abandonment of rail lines and rail freight service may alter the delivery to market of many commodities. In addition, the resultant motor vehicle freight traffic increases the burden on state highways and county roads. In many cases, the cost of upgrading the state highways and county roads exceeds the cost of maintaining rail freight service. Thus, the economy of the state will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating a mechanism which keeps rail freight lines operating if the benefits of the service outweigh the cost.

Recognizing the implications of this trend for freight mobility and the state's economic future, the legislature believes that better freight rail planning, better cooperation to preserve rail lines, and increased financial assistance from the state are necessary to maintain and improve the freight rail system within the state.

**Sec. 2.** RCW 47.76.020 and 1985 c 432 s 1 are each amended to read as follows:

(1) The department of transportation shall prepare and periodically update a state rail plan, the objective of which is to identify, evaluate, and encourage essential rail service. The plan shall:

(a) Identify and evaluate those rail freight lines that may be abandoned or have recently been abandoned;

(b) Quantify the costs and benefits of maintaining rail service on those lines that are likely to be abandoned (~~and the acquisition of right-of-way for the eventual restoration of service on lines recently abandoned~~); and

(c) Establish priorities for determining which rail lines should receive state support. The priorities should include the anticipated benefits to the state and local economy, the anticipated cost of road and highway improvements necessitated by the abandonment of the rail line, the likelihood the rail line receiving funding can meet operating costs from freight charges, surcharges on rail traffic, and other funds authorized to be raised by a county or port district, and the impact of abandonment on changes in energy utilization and air pollution.

(2) The state rail plan may be prepared in conjunction with the rail plan prepared by the department pursuant to the federal Railroad Revitalization and Regulatory Reform Act.

**Sec. 3.** RCW 47.76.130 and 1990 c 43 s 4 are each amended to read as follows:

The state, counties, local communities, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines which provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service or corridor preservation must benefit the state's interests, which include reducing public roadway maintenance and repair costs, increasing economic development opportunities, preserving jobs, and enhancing safety, and is contingent upon appropriate local participation. Before spending state moneys on projects the department shall seek federal, local, and private funding participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's light density line system through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in interstate commerce commission proceedings on abandonments, when necessary, to protect the state's interest.

(3) As conditions warrant, the following criteria shall be used for identifying the state's essential rail system:

(a) Established regional and short-line carriers excluding private operations which are not common carriers;

(b) Former state project lines, which are lines that have been studied and have received funds from the state and federal governments;

(c) Lines serving major agricultural and forest product areas or terminals, with such terminals generally being within a fifty-mile radius of producing areas, and sites associated with commodities shipped by rail;

(d) Lines serving ports, seaports, and navigable river ports;

(e) Lines serving power plants or energy resources;

(f) Lines used for passenger service;

(g) Mainlines connecting to the national and Canadian rail systems;

(h) Major intermodal service points or hubs; and

(i) The military's strategic rail network.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance.

**Sec. 4.** RCW 47.76.030 and 1991 sp.s. c 13 s 22 are each amended to read as follows:

(1) The essential rail assistance account is ~~((hereby))~~ created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to ~~((first class))~~ cities, county rail districts, counties, and port districts for the purpose of:

(a) Acquiring, ~~((maintaining))~~ rebuilding, rehabilitating, or improving branch rail lines;

(b) ~~((Operating))~~ Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Construction of transloading facilities to increase business on light density lines or to mitigate the impacts of abandonment; or

(d) Preservation, including operation, of viable light density lines, as identified by the Washington state department of transportation, in compliance with this chapter.

(3) ~~((First class))~~ The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired ~~((, repaired, or improved))~~ under this chapter.

(4) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(5) If rail lines or rail rights of way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights of way cannot be used for any other purposes without the consent of the underlying fee title holder

or reversionary rights holder, or compensation has been made to the underlying fee title holder or reversionary rights holder.

~~((5) Moneys distributed under subsection (2) of this section shall not exceed eighty percent of the cost of the service or project undertaken. At least twenty percent of the cost shall be provided by the first class city, county, port district, or other local sources.~~

~~(6) The amount distributed under this section shall be repaid to the state by the first class city, county rail district, county, or port district. The)) (6) Projects should be prioritized on the basis of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially.~~

~~(7) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department((, of the distribution of the moneys and shall be deposited in the essential rail assistance account)). The repayment schedule and rate of interest, if any, shall be ((set at the time of)) determined before the distribution of the moneys.~~

~~(8) The state shall maintain a contingent interest in a line that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.~~

**Sec. 5.** RCW 47.76.140 and 1990 c 43 s 5 are each amended to read as follows:

In rail banking situations where it is not practicable to implement or continue freight rail service operations until some future date and the line's right of way is available for ~~((purchase and/or))~~ acquisition or meets the criteria of this chapter ((47.76 RCW)):

(1) The department of transportation shall ~~((preserve))~~ identify and evaluate rail corridors ((for future rail service by purchasing the rights of way with funds specifically appropriated from the essential rail banking account created in RCW 47.76.160)) of state-wide significance in the state rail plan.

(2) The department shall preserve corridors of state-wide significance by acquiring the rights of way with funds specifically appropriated from the essential rail banking account created in RCW 47.76.160 (as recodified by this act).

(3) Acquisition of rights of way may also include track, bridges, and associated elements.

~~((3) All corridors purchased under the rail bank program shall be identified by the department of transportation.))~~

(4) All corridors acquired by governmental entities ~~((by donation or reversion))~~ for future rail use shall be identified in the rail bank program.

(5) Any rail rights of way acquired with state money will be for present or future rail purposes and can only be used for other purposes with the consent of

the Washington state department of transportation and the consent of the underlying fee title holder or reversionary rights holder, or if compensation has been made to the underlying fee title holder or reversionary rights holder.

**Sec. 6.** RCW 47.76.160 and 1991 sp.s. c 13 s 120 are each amended to read as follows:

(1) The essential rail banking account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes specified in this section.

(2) Moneys in the account may be used by the department to:

(a) ~~((Purchase unused))~~ Acquire rail rights of way; ~~((or))~~

(b) Provide ~~((up to eighty percent of the))~~ funding ~~((through loans))~~ to ~~((first class))~~ cities, port districts, counties, and county rail districts to ~~((purchase unused))~~ acquire rail rights of way; or

(c) Provide for essential corridor maintenance including drainage management and fire and weed control when necessary.

(3) Use of the moneys pursuant to subsection (2) of this section shall be for rights of way that meet the following criteria:

(a) The right of way has been identified~~((;))~~ and evaluated~~((, and analyzed))~~ in the state rail plan prepared pursuant to this chapter;

(b) The right of way may be or has been abandoned; and

(c) The right of way has potential for future rail service~~((; and~~

~~((d) Reestablishment of rail service would benefit the state of Washington; and this benefit shall be based on the public and private costs and benefits of reestablishing the service compared with alternative service including necessary road improvement costs, or of taking no action.~~

Funds in the account may be expended for this purpose only with legislative appropriation. Funds for acquisition of any line shall be expended only after obtaining the approval of the legislative transportation committee). The department of transportation shall immediately report any expenditure of essential rail banking account funds on rail banking projects to the legislative transportation committee. The report shall include a description of the project, the project's rank in relation to other potential projects, the amount of funds expended, the terms and parties to the transaction, and any other information that the legislative transportation committee may require.

(4) The department may also expend funds from the receipt of a donation of funds sufficient to cover the property acquisition and management costs. The department may receive donations of funds for this purpose, which shall be conditioned upon, and made in consideration for the repurchase rights contained in RCW 47.76.040 (as recodified by this act).

(5) The department or the participating local jurisdiction shall be responsible for maintaining the right of way, including provisions for drainage management, for fire and weed control, and for liability associated with ownership.



(6) Nothing in this section and in RCW 47.76.140 and 47.76.030 (as recodified by this act) shall be interpreted or applied so as to impair the reversionary rights of abutting landowners, if any, without just compensation.

(7) The department shall develop guidelines for expenditure of essential rail banking funds in the best interest of the state.

(8) Moneys loaned under this section must be repaid to the state by the city, port district, county, or county rail district. The repayment must occur within a period not longer than fifteen years, as set by the department, of the distribution of the moneys and deposited in the essential rail banking account. The repayment schedule and rate of interest, if any, must be set at the time of the distribution of the moneys.

(9) The state shall maintain a contingent interest in any property that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, and associated elements for salvage, or use the line in any other manner subordinating the state's interest without permission from the department.

Sec. 7. RCW 47.76.040 and 1991 sp.s. c 15 s 61 are each amended to read as follows:

The department (~~shall~~) may sell or lease property acquired under (~~RCW 47.76.140~~) this chapter to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity which originally donated funds to the department (~~(pursuant to RCW 47.76.140)~~) under this chapter shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

If no county rail district, county, port district, or other public or private entity authorized to operate rail service (~~(offers to purchase such)~~) purchases or leases the property within six years after its acquisition by the department, the department may sell or lease such property in the manner provided in RCW 47.76.050 (as recodified by this act). Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.060 or 47.76.080 (as recodified by this act).

Sec. 8. RCW 47.76.050 and 1991 sp.s. c 15 s 62 are each amended to read as follows:

(1) If real property acquired by the department under (~~RCW 47.76.140~~) this chapter is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell or lease the property at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;

(d) The former owner, heir, or successor of the property from whom the property was acquired;

(e) Any abutting private owner or owners.

(2) Notice of intention to sell under this section shall be given by publication in one or more newspapers of general circulation in the area in which the property is situated not less than thirty days prior to the intended date of sale.

(3) Sales to purchasers may, at the department's option, be for cash or by real estate contract.

(4) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received under this section shall be deposited in the essential rail (~~(assistance)~~) banking account of the general fund.

**Sec. 9.** RCW 47.76.060 and 1991 sp.s. c 15 s 63 are each amended to read as follows:

If real property acquired by the department under (~~(RCW 47.76.140)~~) this chapter is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may transfer and convey the property to the United States, its agencies or instrumentalities, to any other state agency, or to any county or city or port district of this state when, in the judgment of the secretary, the transfer and conveyance is consistent with the public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, the secretary shall execute and deliver to the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as necessary to fulfill the terms of the agreement. All moneys paid to the state of Washington under this section shall be deposited in the essential rail (~~(assistance)~~) banking account of the general fund.

**Sec. 10.** RCW 47.76.070 and 1991 sp.s. c 15 s 64 are each amended to read as follows:

The department is authorized subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to rent or lease any lands acquired under (~~(RCW 47.76.140)~~) this chapter, upon such terms and conditions as the department determines.

**Sec. 11.** RCW 47.76.080 and 1991 sp.s. c 15 s 65 are each amended to read as follows:

(1) If real property acquired by the department under (~~(RCW 47.76.140)~~) this chapter is not sold, conveyed, or leased to a public or private entity (~~(authorized to operate rail service)~~) within six years of its acquisition by the department, the department may, in its discretion, sell the property at public auction in accordance with subsections (2) through (5) of this section.

(2) The department shall first give notice of the sale by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks before the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall

be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) In accordance with the terms set forth in the notice, the department shall sell the property at the public auction to the highest and best bidder if the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property may be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property under this subsection shall be in writing and may be rejected at any time before written acceptance by the department.

(5) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(6) All moneys received under this section shall be deposited in the essential rail (~~assistance~~) banking account of the general fund.

**Sec. 12.** RCW 47.76.090 and 1991 sp.s. c 15 s 66 are each amended to read as follows:

Transfers of ownership of property acquired under (~~RCW 47.76.140~~) this chapter are exempt from chapters 8.25 and 8.26 RCW.

**Sec. 13.** RCW 47.76.170 and 1990 c 43 s 8 are each amended to read as follows:

The department shall evaluate the state freight rail program performance at the end of six years (in 1996) with respect to past and current conditions and future needs. The results of this evaluation shall be presented to the legislative transportation committee.

**NEW SECTION. Sec. 14.** A new section is added to chapter 47.30 RCW to read as follows:

For purposes of 43 U.S.C. 912 and related provisions of federal law involving federally granted railroad rights of way, a bicycle, equestrian or pedestrian path shall be deemed to be a public highway under the laws of the state of Washington.

**NEW SECTION. Sec. 15.** RCW 47.76.010, 47.76.110, 47.76.020, 47.76.120, 47.76.130, 47.76.030, 47.76.140, 47.76.160, 47.76.040, 47.76.050, 47.76.060, 47.76.070, 47.76.080, 47.76.090, 47.76.170, and 47.76.190, whether or not amended by this act, shall be recodified within chapter 47.76 RCW in that order.

**NEW SECTION. Sec. 16.** The following acts or parts of acts are each repealed:

(1) RCW 47.76.100 and 1990 c 43 s 1; and

(2) RCW 47.76.150 and 1990 c 43 s 6.

Passed the Senate April 19, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 225

[Substitute Senate Bill 5922]

### ADVANCED REGISTERED NURSE PRACTITIONER APPROVED AS NURSE ANESTHETIST—SELECTION AND USE OF CONTROLLED SUBSTANCES AUTHORIZED

**Effective Date:** 5/6/93

AN ACT Relating to the use of controlled substances by advanced registered nurse practitioners, certified nurse anesthetists; amending RCW 18.88.280; and declaring an emergency.

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

**Sec. 1.** RCW 18.88.280 and 1989 c 114 s 7 are each amended to read as follows:

This chapter shall not be construed as (1) prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice professional nursing within the meaning of this chapter, (2) or preventing any person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency; (3) nor shall it be construed as prohibiting such practice of nursing by students enrolled in approved schools as may be incidental to their course of study nor shall it prohibit such students working as nursing aides; (4) nor shall it be construed as prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing service including those duties which involve minor nursing services for persons performed in hospitals, nursing homes or elsewhere under the direction of licensed physicians or the supervision of licensed, registered nurses; (5) nor shall it be construed as prohibiting or preventing the practice of nursing in this state by any legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if such person does not represent or hold himself or herself out as a nurse licensed to practice in this state; (6) nor shall it be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any church by adherents thereof so long as they do not engage in the practice of nursing as defined in this chapter; (7) nor shall it be construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his or her official duties; (8) permitting the measurement of the powers or range of human vision, or the determination of the accommodation

and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof; (9) permitting the prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics; (10) permitting the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye; (11) prohibiting the performance of routine visual screening; (12) permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively; (13) permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine; (14) permitting the practice of (~~podiatry~~) podiatric medicine and surgery as defined in chapter 18.22 RCW; (15) permitting the performance of major surgery, except such minor surgery as the board may have specifically authorized by rule or regulation duly adopted in accordance with the provisions of chapter 34.05 RCW; (16) permitting the prescribing of controlled substances as defined in schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, except as provided in subsection (18) of this section; (17) prohibiting the determination and pronouncement of death; (18) prohibiting advanced registered nurse practitioners, approved by the board as certified registered nurse anesthetists from selecting, ordering, or administering controlled substances as defined in schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, consistent with their board-recognized scope of practice; subject to facility-specific protocols, and subject to a request for certified registered nurse anesthetist anesthesia services issued by a physician licensed under chapter 18.71 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, a dentist licensed under chapter 18.32 RCW, or a podiatric physician and surgeon licensed under chapter 18.22 RCW; the authority to select, order, or administer schedule II through IV controlled substances being limited to those drugs which are to be directly administered to patients who require anesthesia for diagnostic, operative, obstetrical, or therapeutic procedures in a hospital, clinic, ambulatory surgical facility, or the office of a practitioner licensed under chapter 18.71, 18.57, 18.32, or 18.22 RCW; "select" meaning the decision-making process of choosing a drug, dosage, route, and time of administration; and "order" meaning the process of directing licensed individuals pursuant to their statutory authority to directly administer a drug or to dispense, deliver, or distribute a drug for the purpose of direct administration to a patient, pursuant to instructions of the certified registered nurse anesthetist. "Protocol" means a statement regarding practice and documentation concerning such items as categories of patients, categories of medications, or categories of procedures rather than detailed case-specific formulas for the practice of nurse anesthesia.

**NEW SECTION.** Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 19, 1993.  
Passed the House April 6, 1993.  
Approved by the Governor May 6, 1993.  
Filed in Office of Secretary of State May 6, 1993.

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## CHAPTER 226

[Engrossed Substitute House Bill 1988]

### EMPLOYMENT AND TRAINING SERVICES FOR UNEMPLOYED WORKERS

**Effective Date:** 7/25/93 - Except Sections 10 & 12 which become effective on 6/30/99; & Section 14 which becomes effective on 1/1/98

AN ACT Relating to employment and training; amending RCW 50.16.010, 50.16.010, 50.16.020, 50.16.020, 50.29.025, and 50.29.025; adding a new section to chapter 50.24 RCW; adding new sections to chapter 50.16 RCW; adding a new section to chapter 50.29 RCW; adding new sections to chapter 43.131 RCW; creating new sections; and providing effective dates.

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

**NEW SECTION.** Sec. 1. The legislature finds that:

(1) The economy of the state depends on a well-trained work force and a strong employment system. A well-trained work force generates the productivity employers need in order to compete in the global economy and to pay workers good wages. A strong employment and unemployment system ameliorates the negative impacts of unemployment and matches the needs of employers with individuals seeking employment.

(2) The legislature further finds that too many Washington workers are unemployed, many of whom need new or enhanced work force skills in order to meet current demand in the labor market. With the increasing pace of economic change, employees must become life-long learners who periodically obtain additional education and training. The state should provide unemployed workers a variety of effective services, including timely payment of unemployment benefits, job and career counseling, job referral services, and training.

(3) At the same time, too many employers report problems finding workers with the right skills. The state should provide employers with an effective training system and an efficient method for locating well-qualified workers.

Therefore, the legislature finds it necessary and in the public interest to create an employment and training trust fund in order to provide state funding for employment and training services.

**NEW SECTION.** Sec. 2. It is the purpose of this act to reduce the amount paid by employers in the state to the unemployment compensation fund by twelve one-hundredths of one percent of taxable wages.

It is also the purpose of this act to establish a separate fund for training and employment services for dislocated workers. This fund shall consist of contributions of twelve one-hundredths of one percent of taxable wages.

It is the intent of the legislature that this act not result in any net increase in employer tax rates.

It is the further intent of the legislature that the employment security department and the state board for community and technical colleges shall work cooperatively to ensure expeditious training and placement of dislocated workers.

**NEW SECTION.** Sec. 3. A new section is added to chapter 50.24 RCW to read as follows:

Employment and training trust fund contributions to the employment and training trust fund shall accrue and become payable by each employer consistent with the tax schedule in RCW 50.29.025 as now existing or hereafter amended, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, and those qualified employers assigned rate class 20 under RCW 50.29.025 at the rate of twelve one-hundredths of one percent for rate years 1994, 1995, 1996, and 1997. The amount of wages subject to tax shall be determined under RCW 50.24.010.

**NEW SECTION.** Sec. 4. A new section is added to chapter 50.16 RCW to read as follows:

There is hereby established the employment and training trust fund. All moneys in this fund are irrevocably vested for the administration of this title. The employment and training trust fund shall consist of all moneys from employment and training trust fund contributions as established in section 3 of this act. The treasurer of the employment security department shall deposit, administer, and disburse all moneys in the fund under rules adopted by the commissioner and RCW 43.01.050 and 43.84.092 are not applicable to this fund. The treasurer of the employment security department shall be the treasurer of the employment and training trust fund as described in RCW 50.16.020 and shall give a bond conditioned upon the faithful performance of his or her duties in connection with the fund. All sums recovered on the official bond for losses sustained by the employment and training trust fund must be deposited in the fund. Notwithstanding any provision of this section, all moneys received and deposited in the fund under chapter . . . , Laws of 1993 (this act), remain part of the employment and training trust fund and may be used solely for the following purposes:

- (1) Providing training and related support services, including financial aid, to individuals who have been terminated or have received a notice of termination from employment, and who are eligible for or have exhausted their entitlement to unemployment compensation benefits within the previous twenty-four months;
- (2) Assisting workers in finding employment through job referral, job development, counseling, and referral to training resources;
- (3) Obtaining labor market information necessary for the administration of the unemployment insurance program and to assist unemployed workers in

finding employment. In obtaining the information the employment security department shall ensure the inclusion of information gathered from small businesses as defined in RCW 43.31.025, with particular emphasis on businesses with fifteen or fewer employees;

(4) Performing research by an independent state auditing agency or an independent contractor to determine effectiveness of unemployment insurance programs and to determine whether program changes would benefit workers and employers;

(5) Collecting contributions for and administration of the employment and training trust fund;

(6) Improving service through improved use of information technology; and

(7) Establishing collocation employment security and job service outstations at community and technical college campuses across the state. These outstations shall provide a one-stop point of access for unemployed and dislocated workers seeking job placement services, training program information, and labor market information. In communities without co-located outstations the local job service center and community or technical college shall collaborate to provide these services.

**NEW SECTION.** Sec. 5. For calculations occurring on or after June 30, 1994, and in accordance with RCW 50.29.025, if the commissioner determines that the employment and training trust fund contributions for the most recent rate year have increased employer unemployment compensation contribution rates, the revenues received by the department from the employment and training contribution for calendar quarters beginning the following July 1st shall not be deposited in the employment and training trust fund but shall be deposited in the unemployment compensation fund.

**NEW SECTION.** Sec. 6. A new section is added to chapter 50.16 RCW to read as follows:

An individual may be eligible for applicable employment security benefits while participating in work force training. Eligibility is at the discretion of the commissioner of employment security after submitting a commissioner-approved training waiver and developing a detailed individualized training plan.

Benefits paid under this section may not be charged to the experience rating accounts of individual employers.

The commissioner shall adopt rules as necessary to implement this section.

**NEW SECTION.** Sec. 7. Aerospace workers unemployed as the result of downsizing and restructuring of the aerospace industry will be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043.

**NEW SECTION.** Sec. 8. (1) The employment security department shall disburse the amounts appropriated by the legislature for the purposes of chapter . . . , Laws of 1993 (this act) to the state board for community and technical colleges. These funds shall be allotted for, and only for, training programs and



related support services, including financial aid, in the community and technical college system that:

(a) Are consistent with work force training priorities and based upon the comprehensive plan for work force training developed by the work force training and education coordinating board. The state board for community and technical colleges shall develop a plan for use and evaluation of these funds which is to be approved by the work force training and education coordinating board for consistency with their work force priorities. In developing and approving the plan, information shall be gathered from small businesses as defined in RCW 43.31.025, with particular emphasis on businesses with fifteen or fewer employees. Further, the state board for community and technical colleges shall report to the work force training and education coordinating board and the legislature annually on the progress and results of the training and support services provided to eligible participants;

(b) Provide increased enrollments for individuals who have been terminated or have received a notice of termination from employment, and who are eligible for or have exhausted their entitlement to unemployment compensation benefits within the previous twenty-four months, with first priority given to individuals who are unlikely to return to employment in the individuals' principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry; and

(c) Provide increased enrollments and support services, including financial aid, that do not replace or supplant any existing enrollments, programs, support services, or funding sources. For fiscal year 1994, the state board for community and technical colleges may borrow from the general fund to initiate the programs authorized under this act. However, the board shall repay the borrowed amount by the end of the fiscal biennium from funds appropriated to it from the employment and training trust fund.

(2) For purposes of chapter . . . , Laws of 1993 (this act), training provided by the community and technical colleges shall only consist of basic skills and literacy, occupational skills, vocational education, and related or supplemental instruction for apprentices who are enrolled in a registered, state-approved apprenticeship program. Community and technical colleges may contract with skill centers to provide training authorized in this section. Upon the request of an eligible recipient, a community and technical college may contract with a private technical school for specialized vocational training. Available tuition for the training is limited to the amount that would otherwise be obtained per enrolled quarter to a public institution. Furthermore, the funding is only available to students who seek training in a course of study not available at a public institution within an eligible recipient's congressional district.

**Sec. 9.** RCW 50.16.010 and 1991 sp.s. c 13 s 59 are each amended to read as follows:

There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an

administrative contingency fund, an employment and training trust fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 and 43.84.092 shall not be applicable.

(1) The unemployment compensation fund shall consist of

~~((1))~~ (a) all contributions and payments in lieu of contributions collected pursuant to the provisions of this title,

~~((2))~~ (b) any property or securities acquired through the use of moneys belonging to the fund,

~~((3))~~ (c) all earnings of such property or securities,

~~((4))~~ (d) any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended,

~~((5))~~ (e) all money recovered on official bonds for losses sustained by the fund,

~~((6))~~ (f) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended,

~~((7))~~ (g) all money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and

~~((8))~~ (h) all moneys received for the fund from any other source.

All moneys in the unemployment compensation fund shall be commingled and undivided.

(2)(a) The administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title~~((7))~~;

(ii) All fines and penalties collected pursuant to the provisions of this title~~((7))~~;

(iii) All sums recovered on official bonds for losses sustained by the fund~~((7))~~; and

(iv) Revenue received under RCW 50.24.014:

PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(b) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary for:

~~((a))~~ (i) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

~~((b))~~ (ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received,

provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

Money in the special account created under RCW 50.24.014 may only be expended, after appropriation, for the purposes specified in RCW (~~74.09.035, 74.09.510, 74.09.520, and 74.09.700~~) 50.62.010, 50.62.020, 50.62.030, 50.04.070, 50.04.072, 50.16.010, 50.29.025, 50.24.014, 50.44.053, and 50.22.010.

(3) The employment and training trust fund shall consist of all contributions received from the employment and training trust fund contributions in accordance with section 3 of this act.

**Sec. 10.** RCW 50.16.010 and 1993 c ... s 9 (section 9 of this act) are each amended to read as follows:

There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, (~~an employment and training trust fund,~~) and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 (~~and 43.84.092~~) shall not be applicable.

~~((+))~~ The unemployment compensation fund shall consist of

~~((+))~~ (1) all contributions and payments in lieu of contributions collected pursuant to the provisions of this title,

~~((+))~~ (2) any property or securities acquired through the use of moneys belonging to the fund,

~~((+))~~ (3) all earnings of such property or securities,

~~((+))~~ (4) any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended,

~~((+))~~ (5) all money recovered on official bonds for losses sustained by the fund,

~~((+))~~ (6) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended,

~~((+))~~ (7) all money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and

~~((+))~~ (8) all moneys received for the fund from any other source.

All moneys in the unemployment compensation fund shall be commingled and undivided.

~~((2)(+))~~ The administrative contingency fund shall consist of(~~(~~

~~(+))~~ (i) all interest on delinquent contributions collected pursuant to this title(~~(~~  
~~(+))~~), (ii) all fines and penalties collected pursuant to the provisions of this title(~~(~~

~~(+))~~), (iii) all sums recovered on official bonds for losses sustained by the fund(~~(~~, and

~~(+))~~ (iv) revenue received under RCW 50.24.014:

PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

~~((b))~~ Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary for:

~~((#))~~ (a) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

~~((#))~~ (b) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

Money in the special account created under RCW 50.24.014 may only be expended, after appropriation, for the purposes specified in RCW 50.62.010, 50.62.020, 50.62.030, 50.04.070, 50.04.072, 50.16.010, 50.29.025, 50.24.014, 50.44.053, and 50.22.010.

~~((3)) The employment and training trust fund shall consist of all contributions received from the employment and training trust fund contributions in accordance with section 2 of this act.)~~

**Sec. 11.** RCW 50.16.020 and 1983 1st ex.s. c 23 s 10 are each amended to read as follows:

The commissioner shall designate a treasurer and custodian of the unemployment compensation fund, the employment and training trust fund, and ~~((f))~~ the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his or her warrants upon them in accordance with such regulations as the commissioner shall prescribe. ~~((H))~~ The treasurer and custodian shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: PROVIDED, HOWEVER, That refunds of interest or penalties on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his or her duties as a custodian of the funds in an amount fixed by the director of the department of general administration and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such fund.

**Sec. 12.** RCW 50.16.020 and 1993 c .... s 11 (section 11 of this act) are each amended to read as follows:

The commissioner shall designate a treasurer and custodian of the unemployment compensation fund(~~(, the employment and training trust fund,))~~) and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his or her warrants upon them in accordance with such regulations as the commissioner shall prescribe. The treasurer and custodian shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: PROVIDED, HOWEVER, That refunds of interest or penalties on delinquent contributions shall be paid from the adminis-

trative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his or her duties as a custodian of the funds in an amount fixed by the director of the department of general administration and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such fund.

**Sec. 13.** RCW 50.29.025 and 1990 c 245 s 7 are each amended to read as follows:

The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
3.40 and above	A
2.90 to 3.39	B
2.40 to 2.89	C
1.90 to 2.39	D
1.40 to 1.89	E
Less than 1.40	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following table for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedule((§) of Contribution((§) Rates for Effective Tax Schedule					
From	To	Rate Class	A	B	C	D	E	F
<del>((0.00</del>	<del>5.00</del>	<del>1</del>	<del>0.48</del>	<del>0.58</del>	<del>0.98</del>	<del>1.48</del>	<del>1.88</del>	<del>2.48</del>
<del>5.01</del>	<del>10.00</del>	<del>2</del>	<del>0.48</del>	<del>0.78</del>	<del>1.18</del>	<del>1.68</del>	<del>2.08</del>	<del>2.78</del>
<del>10.01</del>	<del>15.00</del>	<del>3</del>	<del>0.58</del>	<del>0.98</del>	<del>1.38</del>	<del>1.78</del>	<del>2.28</del>	<del>2.88</del>
<del>15.01</del>	<del>20.00</del>	<del>4</del>	<del>0.78</del>	<del>1.18</del>	<del>1.58</del>	<del>1.98</del>	<del>2.48</del>	<del>3.08</del>
<del>20.01</del>	<del>25.00</del>	<del>5</del>	<del>0.98</del>	<del>1.38</del>	<del>1.78</del>	<del>2.18</del>	<del>2.68</del>	<del>3.18</del>
<del>25.01</del>	<del>30.00</del>	<del>6</del>	<del>1.18</del>	<del>1.58</del>	<del>1.98</del>	<del>2.38</del>	<del>2.78</del>	<del>3.28</del>
<del>30.01</del>	<del>35.00</del>	<del>7</del>	<del>1.38</del>	<del>1.78</del>	<del>2.18</del>	<del>2.58</del>	<del>2.98</del>	<del>3.38</del>
<del>35.01</del>	<del>40.00</del>	<del>8</del>	<del>1.58</del>	<del>1.98</del>	<del>2.38</del>	<del>2.78</del>	<del>3.18</del>	<del>3.58</del>

40.01	45.00	9	1.78	2.18	2.58	2.98	3.38	3.78
45.01	50.00	10	1.98	2.38	2.78	3.18	3.58	3.98
50.01	55.00	11	2.28	2.58	2.98	3.38	3.78	4.08
55.01	60.00	12	2.48	2.78	3.18	3.58	3.98	4.28
60.01	65.00	13	2.68	2.98	3.38	3.78	4.18	4.48
65.01	70.00	14	2.88	3.18	3.58	3.98	4.38	4.68
70.01	75.00	15	3.08	3.38	3.78	4.18	4.58	4.78
75.01	80.00	16	3.28	3.58	3.98	4.38	4.68	4.88
80.01	85.00	17	3.48	3.78	4.18	4.58	4.88	4.98
85.01	90.00	18	3.88	4.18	4.58	4.88	4.98	5.18
90.01	95.00	19	4.28	4.58	4.98	5.08	5.18	5.38
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40))

<u>0.00</u>	<u>5.00</u>	<u>1</u>	<u>0.36</u>	<u>0.46</u>	<u>0.86</u>	<u>1.36</u>	<u>1.76</u>	<u>2.36</u>
<u>5.01</u>	<u>10.00</u>	<u>2</u>	<u>0.36</u>	<u>0.66</u>	<u>1.06</u>	<u>1.56</u>	<u>1.96</u>	<u>2.56</u>
<u>10.01</u>	<u>15.00</u>	<u>3</u>	<u>0.46</u>	<u>0.86</u>	<u>1.26</u>	<u>1.66</u>	<u>2.16</u>	<u>2.76</u>
<u>15.01</u>	<u>20.00</u>	<u>4</u>	<u>0.66</u>	<u>1.06</u>	<u>1.46</u>	<u>1.86</u>	<u>2.36</u>	<u>2.96</u>
<u>20.01</u>	<u>25.00</u>	<u>5</u>	<u>0.86</u>	<u>1.26</u>	<u>1.66</u>	<u>2.06</u>	<u>2.56</u>	<u>3.06</u>
<u>25.01</u>	<u>30.00</u>	<u>6</u>	<u>1.06</u>	<u>1.46</u>	<u>1.86</u>	<u>2.26</u>	<u>2.66</u>	<u>3.16</u>
<u>30.01</u>	<u>35.00</u>	<u>7</u>	<u>1.26</u>	<u>1.66</u>	<u>2.06</u>	<u>2.46</u>	<u>2.86</u>	<u>3.26</u>
<u>35.01</u>	<u>40.00</u>	<u>8</u>	<u>1.46</u>	<u>1.86</u>	<u>2.26</u>	<u>2.66</u>	<u>3.06</u>	<u>3.46</u>
<u>40.01</u>	<u>45.00</u>	<u>9</u>	<u>1.66</u>	<u>2.06</u>	<u>2.46</u>	<u>2.86</u>	<u>3.26</u>	<u>3.66</u>
<u>45.01</u>	<u>50.00</u>	<u>10</u>	<u>1.86</u>	<u>2.26</u>	<u>2.66</u>	<u>3.06</u>	<u>3.46</u>	<u>3.86</u>
<u>50.01</u>	<u>55.00</u>	<u>11</u>	<u>2.16</u>	<u>2.46</u>	<u>2.86</u>	<u>3.26</u>	<u>3.66</u>	<u>3.96</u>
<u>55.01</u>	<u>60.00</u>	<u>12</u>	<u>2.36</u>	<u>2.66</u>	<u>3.06</u>	<u>3.46</u>	<u>3.86</u>	<u>4.16</u>
<u>60.01</u>	<u>65.00</u>	<u>13</u>	<u>2.56</u>	<u>2.86</u>	<u>3.26</u>	<u>3.66</u>	<u>4.06</u>	<u>4.36</u>
<u>65.01</u>	<u>70.00</u>	<u>14</u>	<u>2.76</u>	<u>3.06</u>	<u>3.46</u>	<u>3.86</u>	<u>4.26</u>	<u>4.56</u>
<u>70.01</u>	<u>75.00</u>	<u>15</u>	<u>2.96</u>	<u>3.26</u>	<u>3.66</u>	<u>4.06</u>	<u>4.46</u>	<u>4.66</u>
<u>75.01</u>	<u>80.00</u>	<u>16</u>	<u>3.16</u>	<u>3.46</u>	<u>3.86</u>	<u>4.26</u>	<u>4.56</u>	<u>4.76</u>
<u>80.01</u>	<u>85.00</u>	<u>17</u>	<u>3.36</u>	<u>3.66</u>	<u>4.06</u>	<u>4.46</u>	<u>4.76</u>	<u>4.86</u>
<u>85.01</u>	<u>90.00</u>	<u>18</u>	<u>3.76</u>	<u>4.06</u>	<u>4.46</u>	<u>4.76</u>	<u>4.86</u>	<u>5.06</u>
<u>90.01</u>	<u>95.00</u>	<u>19</u>	<u>4.16</u>	<u>4.46</u>	<u>4.86</u>	<u>4.96</u>	<u>5.06</u>	<u>5.26</u>
<u>95.01</u>	<u>100.00</u>	<u>20</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and four-tenths percent, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to five and four-tenths percent for the current rate year;



(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter 380, Laws of 1989 amendment to RCW 50.04.150 and not yet qualified to be in the array shall be 2.5 percent for employers whose standard industrial code is "013", "016", "017", "018", "019", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code.

**Sec. 14.** RCW 50.29.025 and 1993 c ... s 13 (section 13 of this act) are each amended to read as follows:

The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
3.40 and above	A
2.90 to 3.39	B
2.40 to 2.89	C
1.90 to 2.39	D
1.40 to 1.89	E
Less than 1.40	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the

department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedules of Contributions Rates for Effective Tax Schedule					
From	To	Rate Class	A	B	C	D	E	F
<del>0.00</del>	<del>5.00</del>	<del>1</del>	<del>0.36</del>	<del>0.46</del>	<del>0.86</del>	<del>1.36</del>	<del>1.78</del>	<del>2.36</del>
<del>5.01</del>	<del>10.00</del>	<del>2</del>	<del>0.36</del>	<del>0.66</del>	<del>1.06</del>	<del>1.56</del>	<del>1.96</del>	<del>2.56</del>
<del>10.01</del>	<del>15.00</del>	<del>3</del>	<del>0.46</del>	<del>0.86</del>	<del>1.26</del>	<del>1.66</del>	<del>2.16</del>	<del>2.76</del>
<del>15.01</del>	<del>20.00</del>	<del>4</del>	<del>0.66</del>	<del>1.06</del>	<del>1.46</del>	<del>1.86</del>	<del>2.36</del>	<del>2.96</del>
<del>20.01</del>	<del>25.00</del>	<del>5</del>	<del>0.86</del>	<del>1.26</del>	<del>1.66</del>	<del>2.06</del>	<del>2.56</del>	<del>3.06</del>
<del>25.01</del>	<del>30.00</del>	<del>6</del>	<del>1.06</del>	<del>1.46</del>	<del>1.86</del>	<del>2.26</del>	<del>2.66</del>	<del>3.16</del>
<del>30.01</del>	<del>35.00</del>	<del>7</del>	<del>1.26</del>	<del>1.66</del>	<del>2.06</del>	<del>2.46</del>	<del>2.86</del>	<del>3.26</del>
<del>35.01</del>	<del>40.00</del>	<del>8</del>	<del>1.46</del>	<del>1.86</del>	<del>2.26</del>	<del>2.66</del>	<del>3.06</del>	<del>3.46</del>
<del>40.01</del>	<del>45.00</del>	<del>9</del>	<del>1.66</del>	<del>2.06</del>	<del>2.46</del>	<del>2.86</del>	<del>3.26</del>	<del>3.66</del>
<del>45.01</del>	<del>50.00</del>	<del>10</del>	<del>1.86</del>	<del>2.26</del>	<del>2.66</del>	<del>3.06</del>	<del>3.46</del>	<del>3.86</del>
<del>50.01</del>	<del>55.00</del>	<del>11</del>	<del>2.16</del>	<del>2.46</del>	<del>2.86</del>	<del>3.26</del>	<del>3.66</del>	<del>3.96</del>
<del>55.01</del>	<del>60.00</del>	<del>12</del>	<del>2.36</del>	<del>2.66</del>	<del>3.06</del>	<del>3.46</del>	<del>3.86</del>	<del>4.16</del>
<del>60.01</del>	<del>65.00</del>	<del>13</del>	<del>2.56</del>	<del>2.86</del>	<del>3.26</del>	<del>3.66</del>	<del>4.06</del>	<del>4.36</del>
<del>65.01</del>	<del>70.00</del>	<del>14</del>	<del>2.76</del>	<del>3.06</del>	<del>3.46</del>	<del>3.86</del>	<del>4.26</del>	<del>4.56</del>
<del>70.01</del>	<del>75.00</del>	<del>15</del>	<del>2.96</del>	<del>3.26</del>	<del>3.66</del>	<del>4.06</del>	<del>4.46</del>	<del>4.66</del>
<del>75.01</del>	<del>80.00</del>	<del>16</del>	<del>3.16</del>	<del>3.46</del>	<del>3.86</del>	<del>4.26</del>	<del>4.56</del>	<del>4.76</del>
<del>80.01</del>	<del>85.00</del>	<del>17</del>	<del>3.36</del>	<del>3.66</del>	<del>4.06</del>	<del>4.46</del>	<del>4.76</del>	<del>4.86</del>
<del>85.01</del>	<del>90.00</del>	<del>18</del>	<del>3.76</del>	<del>4.06</del>	<del>4.46</del>	<del>4.76</del>	<del>4.86</del>	<del>5.06</del>
<del>90.01</del>	<del>95.00</del>	<del>19</del>	<del>4.16</del>	<del>4.46</del>	<del>4.86</del>	<del>4.96</del>	<del>5.06</del>	<del>5.26</del>
<del>95.01</del>	<del>100.00</del>	<del>20</del>	<del>5.40</del>	<del>5.40</del>	<del>5.40</del>	<del>5.40</del>	<del>5.40</del>	<del>5.40</del>
<u>0.00</u>	<u>5.00</u>	<u>1</u>	<u>0.48</u>	<u>0.58</u>	<u>0.98</u>	<u>1.48</u>	<u>1.88</u>	<u>2.48</u>
<u>5.01</u>	<u>10.00</u>	<u>2</u>	<u>0.48</u>	<u>0.78</u>	<u>1.18</u>	<u>1.68</u>	<u>2.08</u>	<u>2.68</u>

<u>10.01</u>	<u>15.00</u>	<u>3</u>	<u>0.58</u>	<u>0.98</u>	<u>1.38</u>	<u>1.78</u>	<u>2.28</u>	<u>2.88</u>
<u>15.01</u>	<u>20.00</u>	<u>4</u>	<u>0.78</u>	<u>1.18</u>	<u>1.58</u>	<u>1.98</u>	<u>2.48</u>	<u>3.08</u>
<u>20.01</u>	<u>25.00</u>	<u>5</u>	<u>0.98</u>	<u>1.38</u>	<u>1.78</u>	<u>2.18</u>	<u>2.68</u>	<u>3.18</u>
<u>25.01</u>	<u>30.00</u>	<u>6</u>	<u>1.18</u>	<u>1.58</u>	<u>1.98</u>	<u>2.38</u>	<u>2.78</u>	<u>3.28</u>
<u>30.01</u>	<u>35.00</u>	<u>7</u>	<u>1.38</u>	<u>1.78</u>	<u>2.18</u>	<u>2.58</u>	<u>2.98</u>	<u>3.38</u>
<u>35.01</u>	<u>40.00</u>	<u>8</u>	<u>1.58</u>	<u>1.98</u>	<u>2.38</u>	<u>2.78</u>	<u>3.18</u>	<u>3.58</u>
<u>40.01</u>	<u>45.00</u>	<u>9</u>	<u>1.78</u>	<u>2.18</u>	<u>2.58</u>	<u>2.98</u>	<u>3.38</u>	<u>3.78</u>
<u>45.01</u>	<u>50.00</u>	<u>10</u>	<u>1.98</u>	<u>2.38</u>	<u>2.78</u>	<u>3.18</u>	<u>3.58</u>	<u>3.98</u>
<u>50.01</u>	<u>55.00</u>	<u>11</u>	<u>2.28</u>	<u>2.58</u>	<u>2.98</u>	<u>3.38</u>	<u>3.78</u>	<u>4.08</u>
<u>55.01</u>	<u>60.00</u>	<u>12</u>	<u>2.48</u>	<u>2.78</u>	<u>3.18</u>	<u>3.58</u>	<u>3.98</u>	<u>4.28</u>
<u>60.01</u>	<u>65.00</u>	<u>13</u>	<u>2.68</u>	<u>2.98</u>	<u>3.38</u>	<u>3.78</u>	<u>4.18</u>	<u>4.48</u>
<u>65.01</u>	<u>70.00</u>	<u>14</u>	<u>2.88</u>	<u>3.18</u>	<u>3.58</u>	<u>3.98</u>	<u>4.38</u>	<u>4.68</u>
<u>70.01</u>	<u>75.00</u>	<u>15</u>	<u>3.08</u>	<u>3.38</u>	<u>3.78</u>	<u>4.18</u>	<u>4.58</u>	<u>4.78</u>
<u>75.01</u>	<u>80.00</u>	<u>16</u>	<u>3.28</u>	<u>3.58</u>	<u>3.98</u>	<u>4.38</u>	<u>4.68</u>	<u>4.88</u>
<u>80.01</u>	<u>85.00</u>	<u>17</u>	<u>3.48</u>	<u>3.78</u>	<u>4.18</u>	<u>4.58</u>	<u>4.88</u>	<u>4.98</u>
<u>85.01</u>	<u>90.00</u>	<u>18</u>	<u>3.88</u>	<u>4.18</u>	<u>4.58</u>	<u>4.88</u>	<u>4.98</u>	<u>5.18</u>
<u>90.01</u>	<u>95.00</u>	<u>19</u>	<u>4.28</u>	<u>4.58</u>	<u>4.98</u>	<u>5.08</u>	<u>5.18</u>	<u>5.38</u>
<u>95.01</u>	<u>100.00</u>	<u>20</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and four-tenths percent, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to five and four-tenths percent for the current rate year;

(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter 380, Laws of 1989 amendment to RCW 50.04.150 and not yet qualified to be in the array shall be 2.5 percent for employers whose standard industrial code is "013", "016", "017", "018", "019", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code.

NEW SECTION. **Sec. 15.** A new section is added to chapter 50.29 RCW to read as follows:

For the purpose of simplification of employer reports, the "combined contribution rate" shall be used in the calculation of employer taxes. The combined contribution rate shall include the regular contribution rate as determined under RCW 50.29.025, employment and training trust fund contributions as determined under section 3 of this act, and special contributions required under RCW 50.24.014. A mention of the "combined contribution rate" may not be made on a tax form or publication unless the form or publication specifically identifies the specific contributions. The combined contribution rate may not be quoted on a form unless the specific component rates are also quoted. The sole purpose of the combined contribution rate is to allow an employer to perform a single calculation on a tax return rather than four separate calculations.

**NEW SECTION.** Sec. 16. Prior to any increase in the employer tax schedule as provided in section 13, chapter . . . , Laws of 1993 (section 13 of this act), the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter . . . , Laws of 1993 (this act) elevated employer contribution rates for the effective tax schedule.

**NEW SECTION.** Sec. 17. (1) The employment security department shall report to the appropriate committees of the legislature by December 1, 1994, and every year thereafter, on the status of the programs provided in this act and the resulting outcomes. The department shall include in its report quantitative and demographic information on the increase in job orders, placement referrals, individualized training plans, skill assessments, and other interventions achieved. The department also shall include in its report the number of repeat clients as a percentage of all clients served by programs provided in chapter . . . , Laws of 1993 (this act).

(2) The state board for community and technical colleges shall report to the appropriate standing committees of the legislature by December 1, 1994, and every year thereafter, the number of certified student full-time equivalents receiving training as provided in this act. In addition, the report must include information on the outcomes of the provided training. The report also must include indices of placement rates, student demographics, training plan completion rates, and comparisons of preprogram and postprogram wage levels.

(3) Each community and technical college shall confer and consult with its respective labor-management advisory board concerning the college's efforts to provide the training and services rendered in chapter . . . , Laws of 1993 (this act) and meet the completion and placement goals of the work force training and education coordinating board. Each community and technical college shall ensure the participation on its labor-management advisory board of small businesses as defined in RCW 43.31.025, with particular emphasis on businesses with fifteen or fewer employees.

(4) The work force training and education coordinating board shall conduct a study in consultation with the higher education coordinating board on the feasibility of: (a) Redirecting all state and federal job training and retraining funds distributed in the state into a separate job training trust fund; and (b) distributing the funds according to uniform criteria. The work force training and education coordinating board shall report to the appropriate committees of the legislature on the results of the study by January 1, 1995.

**NEW SECTION.** Sec. 18. A new section is added to chapter 43.131 RCW to read as follows:

The work force employment and training program created in chapter . . . , Laws of 1993 (this act) shall expire June 30, 1998.

**NEW SECTION.** Sec. 19. A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts are each repealed, effective June 30, 1999:

- (1) Section 1 of this act;
- (2) Section 2 of this act;
- (3) Section 3 of this act;
- (4) Section 4 of this act;
- (5) Section 5 of this act;
- (6) Section 6 of this act;
- (7) Section 8 of this act;
- (8) Section 15 of this act; and
- (9) Section 17 of this act.

**NEW SECTION.** Sec. 20. (1) Sections 10 and 12 of this act shall take effect June 30, 1999;

- (2) Section 14 of this act shall take effect January 1, 1998.

**NEW SECTION.** Sec. 21. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

**NEW SECTION.** Sec. 22. 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. 23. This act applies to tax rate years beginning with tax rate year 1994.

Passed the House April 22, 1993.  
Passed the Senate April 19, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 227**

[Substitute House Bill 1082]

**COLLEGE STUDENTS—PREVENTION OF ALCOHOL ABUSE  
AND UNDERAGE DRINKING**

**Effective Date: 7/25/93**

AN ACT Relating to alcohol abuse and underage drinking among college and university students; and creating a new section.

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

**NEW SECTION. Sec. 1.** No later than January 1, 1994, each of the state universities, regional universities, and The Evergreen State College shall submit to the Washington higher education coordinating board a comprehensive plan to combat student alcohol abuse, including underage drinking. The comprehensive plan must include means for assuring to the highest degree possible that there is no underage drinking on the college or university campus. The comprehensive plan must also provide details of services that will be offered to students who are problem drinkers. Further, the plan must include strategies for combating alcohol abuse and underage drinking in student residences, such as fraternities and sororities. The strategies for combating alcohol abuse and underage drinking must include, but not be limited to, a program in which the college or university enters into individual agreements with all of the fraternities and sororities at the college or university, setting forth its expectations with respect to the conduct of those groups and their members and the sanctions that are to be imposed should the groups fail to satisfy the expectations. The agreements must contain at least the following provisions:

(1) Chapters and their individual members must be expected to comply with federal, state, and local laws and to cooperate fully with the police, fire safety officials, and representatives of the Washington state liquor control board as they carry out their responsibilities;

(2) Chapters must be held accountable for the conduct of their individual members, residents, and guests, and must be expected to take disciplinary actions against members who violate the rules and expectations of their chapters, the college or university, or the community, and to report the actions taken to the appropriate college or university official;

(3) Each organization shall identify persons who can be contacted by the police and other enforcement agencies twenty-four hours a day to handle emergency concerns;

(4) Chapters shall conduct uniform education programs covering substance abuse and acquaintance rape;

(5) Chapters shall register all parties involving a minimum of twenty-five people where alcohol is consumed with the college or university. A chapter meeting or gathering with only chapter members in attendance shall not be considered a party under this subsection. Banquet permits must be obtained from the liquor control board for every party under this subsection;

(6) The college or university shall review the agreements for renewal on an annual basis;

(7) Sanctions for violations of the agreements must include, but not be limited to, warnings, reprimands, monetary fines, restitution for property damage, probation, suspension, or withdrawal of recognition. Upon withdrawal of recognition of a fraternity or sorority chapter the college or university shall immediately notify the national fraternity or sorority that the chapter is no longer in good standing at the college or university.

Copies of the comprehensive plan must be submitted by January 1, 1994, to the house of representatives committees on commerce and labor and higher education and the senate committees on labor and commerce and higher education.

Passed the House April 19, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 228

[Substitute House Bill 1012]

### UNIFORM ANATOMICAL GIFT ACT

Effective Date: 7/25/93

AN ACT Relating to anatomical gifts; amending RCW 46.20.113, 68.50.106, and 68.50.500; adding new sections to chapter 68.50 RCW; repealing RCW 68.50.280, 68.50.340, 68.50.350, 68.50.360, 68.50.370, 68.50.380, 68.50.390, 68.50.400, 68.50.410, and 68.50.420; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) The demand for donor organs and body parts exceeds the available supply for transplant.

(2) The discussion regarding advance directives including anatomical gifts is most appropriate with the primary care provider during an office visit.

(3) Federal law requires hospitals, skilled nursing facilities, home health agencies, and hospice programs to provide information regarding advance directives.

(4) Discretion and sensitivity must be used in discussion and requests for anatomical gifts.

The legislature declares that it is in the best interest of the citizens of Washington to provide a program that will increase the number of anatomical gifts available for donation, and the legislature further declares that wherever possible policies and procedures required in this chapter shall be consistent with the federal requirements.

**NEW SECTION. Sec. 2.** Unless the context requires otherwise, the definitions in this section apply throughout sections 1 through 16 of this act.

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual.

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(5) "Enucleator" means an individual who is qualified to remove or process eyes or parts of eyes.

(6) "Hospital" means a facility licensed under chapter 70.41 RCW, or as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under chapters 18.71 and 18.57 RCW.

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(12) "Technician" means an individual who is qualified to remove or process a part.

**NEW SECTION. Sec. 3.** (1) An individual who is at least eighteen years of age may (a) make an anatomical gift for any of the purposes stated in section 6(1) of this act, (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another



individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift, not made by will, by:

(a) A signed statement;

(b) An oral statement made in the presence of two individuals;

(c) Any form of communication during a terminal illness or injury; or

(d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section 4 of this act.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

**NEW SECTION. Sec. 4.** (1) A member of the following classes of persons, in the order of priority listed, absent contrary instructions by the decedent, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) The appointed guardian of the person of the decedent at the time of death;

(b) The individual, if any, to whom the decedent had given a durable power of attorney that encompassed the authority to make health care decisions;

(c) The spouse of the decedent;

(d) A son or daughter of the decedent who is at least eighteen years of age;

(e) Either parent of the decedent;

(f) A brother or sister of the decedent who is at least eighteen years of age;

(g) A grandparent of the decedent.

(2) An anatomical gift may not be made by a person listed in subsection (1) of this section if:

(a) A person in a prior class is available at the time of death to make an anatomical gift;

(b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) of this section must be made by (a) a document of gift signed by the person or (b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

(4) An anatomical gift by a person authorized under subsection (1) of this section may be revoked by a member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) of this section is not an objection to the making of an anatomical gift.

**NEW SECTION. Sec. 5.** (1) On or before admission to a hospital, or as soon as possible thereafter, a person designated by the hospital shall ask each patient who is at least eighteen years of age: "Are you an organ or tissue donor?" If the answer is affirmative the person shall request a copy of the document of gift. If the answer is negative or there is no answer, the person designated shall provide the patient information about the right to make a gift and shall ask the patient if he or she wishes to become an anatomical parts donor. If the answer is affirmative, the person designated shall provide a document of gift to the patient. The answer to the questions, an available copy of any document of gift or refusal to make an anatomical gift, and any other relevant information shall be placed in the patient's medical record.

(2) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of

an anatomical gift under section 4(1) of this act. The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in section 6 of this act. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The secretary of the department of health shall adopt rules to implement this subsection.

(3) The following persons shall make a reasonable search of the individual and his or her personal effects for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) The agency assuming jurisdiction over the decedent, such as the coroner or medical examiner; or

(b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available another source of that information.

(4) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3)(a) of this section, and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

(5) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made under section 4(1) of this act, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the procurement of the anatomical gift or release and removal of a part.

(6) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability.

(7) Hospitals shall develop policies and procedures to implement this section.

**NEW SECTION. Sec. 6.** (1) The following persons may become donees of anatomical gifts for the purposes stated:

(a) A hospital, physician, surgeon, or procurement organization for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;

(b) An accredited medical or dental school, college, or university for education, research, or advancement of medical or dental science; or

(c) A designated individual for transplantation or therapy needed by that individual.

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift made by a member of a class having priority to act is opposed by a member of the same class or a prior class under section 4(1) of this act, the donee may not accept the anatomical gift.

NEW SECTION. Sec. 7. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in a hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

NEW SECTION. Sec. 8. (1) Rights of a donee created by an anatomical gift are superior to rights of others except when under the jurisdiction of the coroner or medical examiner. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part.

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

NEW SECTION. Sec. 9. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

NEW SECTION. Sec. 10. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding fifty thousand dollars or imprisonment not exceeding five years, or both.

**NEW SECTION.** **Sec. 11.** (1) An anatomical gift authorizes reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(2) The provisions of sections 1 through 16 of this act are subject to the laws of this state governing the jurisdiction of the coroner or medical examiner.

(3) A hospital, physician, surgeon, coroner, medical examiner, local public health officer, enucleator, technician, or other person, who acts in accordance with sections 1 through 16 of this act or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift under section 3 or 4 of this act and the individual's estate are not liable for injury or damage that may result from the making or the use of the anatomical gift.

**NEW SECTION.** **Sec. 12.** Sections 1 through 16 of this act apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of this section.

**NEW SECTION.** **Sec. 13.** This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

**NEW SECTION.** **Sec. 14.** 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. 15.** In any case where a patient is in need of corneal tissue for a transplantation, corneal tissue may be provided by eye banks licensed by the secretary of health under rules promulgated by the department of health.

**NEW SECTION.** **Sec. 16.** Sections 1 through 15 of this act may be cited as the "uniform anatomical gift act."

**NEW SECTION.** **Sec. 17.** Sections 1 through 16 of this act are each added to chapter 68.50 RCW.

**Sec. 18.** RCW 46.20.113 and 1987 c 331 s 81 are each amended to read as follows:

The department of licensing shall provide a statement whereby the licensee may certify (~~(in the presence of two witnesses)~~) his or her willingness to make an anatomical gift under (~~(RCW 68.50.370)~~) section 3 of this act, as now or hereafter amended. The department shall provide the statement in at least one of the following ways:

- (1) On each driver's license; or
- (2) With each driver's license; or
- (3) With each in-person driver's license application.

**Sec. 19.** RCW 68.50.106 and 1987 c 331 s 59 are each amended to read as follows:

In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his or her own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his or her discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. (~~When the autopsy or post mortem requires examination in the region of the pituitary gland, that gland may be removed and utilized for any desirable or needful purpose: PROVIDED, That a reasonable effort to obtain consent as required under RCW 68.50.350 shall be made if that organ is to be so utilized.~~) Costs shall be borne by the county.

**Sec. 20.** RCW 68.50.500 and 1987 c 331 s 71 are each amended to read as follows:

Each hospital shall develop procedures for identifying potential (~~organ and tissue~~) anatomical parts donors. The procedures shall require that any deceased individual's next of kin or other individual, as set forth in (~~RCW 68.50.350~~) section 4 of this act, and the medical record does not specify the deceased as a donor, at or near the time of notification of death be asked whether the deceased was (~~an organ~~) a part donor. If not, the family shall be informed of the option to donate (~~organs and tissues~~) parts pursuant to the uniform anatomical gift act. With the approval of the designated next of kin or other individual, as set forth in (~~RCW 68.50.350~~) section 4 of this act, the hospital shall then notify an established (~~eye bank, tissue bank, or organ procurement agency~~) procurement organization including those organ procurement agencies associated with a national organ procurement transportation network or other eligible donee, as specified in (~~RCW 68.50.360~~) section 6 of this act, and cooperate in the procurement of the anatomical gift or gifts. The procedures shall encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding donations of (~~tissue or organs~~) parts. The procedures may take into account the deceased individual's religious beliefs or obvious unsuitability for (~~organ and tissue~~) an anatomical parts donation. Laws pertaining to the jurisdiction of the coroner shall be complied with in all cases of reportable deaths pursuant to RCW 68.50.010.

**NEW SECTION.** **Sec. 21.** The following acts or parts of acts are each repealed:

(1) RCW 68.50.280 and 1989 1st ex.s. c 9 s 224, 1987 c 331 s 64, & 1975-'76 2nd ex.s. c 60 s 1;

(2) RCW 68.50.340 and 1981 c 44 s 1 & 1969 c 80 s 2;

(3) RCW 68.50.350 and 1987 c 331 s 66 & 1969 c 80 s 3;

- (4) RCW 68.50.360 and 1982 c 9 s 1, 1979 c 37 s 1, & 1969 c 80 s 4;
- (5) RCW 68.50.370 and 1987 c 331 s 67, 1975 c 54 s 2, & 1969 c 80 s 5;
- (6) RCW 68.50.380 and 1969 c 80 s 6;
- (7) RCW 68.50.390 and 1969 c 80 s 7;
- (8) RCW 68.50.400 and 1987 c 331 s 68 & 1969 c 80 s 8;
- (9) RCW 68.50.410 and 1987 c 331 s 69 & 1969 c 80 s 9; and
- (10) RCW 68.50.420 and 1987 c 331 s 70 & 1969 c 80 s 11.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 229

[Substitute House Bill 1014]

### UNIFORM COMMERCIAL CODE—DEPOSITS AND COLLECTIONS AND NEGOTIABLE INSTRUMENTS

Effective Date: 7/1/94

AN ACT Relating to the uniform commercial code; amending RCW 62A.1-201, 62A.1-207, 62A.3-101, 62A.3-102, 62A.3-103, 62A.3-104, 62A.3-105, 62A.3-106, 62A.3-107, 62A.3-108, 62A.3-109, 62A.3-110, 62A.3-111, 62A.3-112, 62A.3-113, 62A.3-114, 62A.3-115, 62A.3-116, 62A.3-117, 62A.3-118, 62A.3-119, 62A.3-201, 62A.3-202, 62A.3-203, 62A.3-204, 62A.3-205, 62A.3-206, 62A.3-207, 62A.3-301, 62A.3-302, 62A.3-303, 62A.3-304, 62A.3-305, 62A.3-306, 62A.3-307, 62A.3-401, 62A.3-402, 62A.3-403, 62A.3-404, 62A.3-405, 62A.3-406, 62A.3-407, 62A.3-408, 62A.3-409, 62A.3-410, 62A.3-411, 62A.3-412, 62A.3-413, 62A.3-414, 62A.3-415, 62A.3-416, 62A.3-417, 62A.3-418, 62A.3-419, 62A.3-501, 62A.3-502, 62A.3-503, 62A.3-504, 62A.3-505, 62A.3-512, 62A.3-515, 62A.3-520, 62A.3-522, 62A.3-525, 62A.3-601, 62A.3-602, 62A.3-603, 62A.3-604, 62A.3-605, 62A.4-101, 62A.4-102, 62A.4-103, 62A.4-104, 62A.4-105, 62A.4-106, 62A.4-107, 62A.4-108, 62A.4-109, 62A.4-201, 62A.4-202, 62A.4-203, 62A.4-204, 62A.4-205, 62A.4-206, 62A.4-207, 62A.4-208, 62A.4-209, 62A.4-210, 62A.4-211, 62A.4-212, 62A.4-213, 62A.4-214, 62A.4-301, 62A.4-302, 62A.4-303, 62A.4-401, 62A.4-402, 62A.4-403, 62A.4-405, 62A.4-406, 62A.4-407, 62A.4-501, 62A.4-502, 62A.4-503, and 62A.4-504; adding a new section to chapter 30.22 RCW; adding new sections to Title 62A RCW; creating new sections; repealing RCW 62A.3-120, 62A.3-121, 62A.3-122, 62A.3-208, 62A.3-506, 62A.3-507, 62A.3-508, 62A.3-509, 62A.3-510, 62A.3-511, 62A.3-606, 62A.3-701, 62A.3-801, 62A.3-802, 62A.3-803, 62A.3-804, and 62A.3-805; and providing an effective date.

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

### ARTICLE I

### GENERAL PROVISIONS

### PART 2

### GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

**Sec. 1.** RCW 62A.1-201 and 1992 c 134 s 14 are each amended to read as follows:

Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of



creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to ~~((an instrument, certificated security, or document of title means the person in possession if (a) in the case of an instrument, it is payable to bearer or to the order of the person in possession, (b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form, or (c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession))~~ a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government (~~(or intergovernmental organization)~~) and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (RCW 62A.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 2. RCW 62A.1-207 and 1965 ex.s. c 157 s 1-207 are each amended to read as follows:

(1) A party who, with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(2) Subsection (1) of this section shall not apply to an accord and satisfaction.

ARTICLE 3

~~((COMMERCIAL PAPER))~~ NEGOTIABLE INSTRUMENTS

PART I

~~((SHORT TITLE, FORM AND INTERPRETATION))~~

GENERAL PROVISIONS AND DEFINITIONS

Sec. 3. RCW 62A.3-101 and 1965 ex.s. c 157 s 3-101 are each amended to read as follows:

SHORT TITLE. This Article ~~((shall be known and))~~ may be cited as Uniform Commercial Code — ~~((Commercial Paper))~~ Negotiable Instruments.

Sec. 4. RCW 62A.3-102 and 1965 ex.s. c 157 s 3-102 are each amended to read as follows:

~~((DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires~~

~~(a) "Issue" means the first delivery of an instrument to a holder or a remitter.~~

~~(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may~~

~~be addressed to one or more such persons jointly or in the alternative but not in succession:~~

~~(e) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.~~

~~(d) "Secondary party" means a drawer or endorser.~~

~~(e) "Instrument" means a negotiable instrument.~~

~~(2) Other definitions applying to this Article and the sections in which they appear are:~~

~~"Acceptance." RCW 62A.3-410.~~

~~"Accommodation party." RCW 62A.3-415.~~

~~"Alteration." RCW 62A.3-407.~~

~~"Certificate of deposit." RCW 62A.3-104.~~

~~"Certification." RCW 62A.3-411.~~

~~"Check." RCW 62A.3-104.~~

~~"Definite time." RCW 62A.3-109.~~

~~"Dishonor." RCW 62A.3-507.~~

~~"Draft." RCW 62A.3-104.~~

~~"Holder in due course." RCW 62A.3-302.~~

~~"Negotiation." RCW 62A.3-202.~~

~~"Note." RCW 62A.3-104.~~

~~"Notice of dishonor." RCW 62A.3-508.~~

~~"On demand." RCW 62A.3-108.~~

~~"Presentment." RCW 62A.3-504.~~

~~"Protest." RCW 62A.3-509.~~

~~"Restrictive indorsement." RCW 62A.3-205.~~

~~"Signature." RCW 62A.3-401.~~

~~(3) The following definitions in other Articles apply to this Article:~~

~~"Account." RCW 62A.4-104.~~

~~"Banking day." RCW 62A.4-104.~~

~~"Clearing house." RCW 62A.4-104.~~

~~"Collecting bank." RCW 62A.4-105.~~

~~"Customer." RCW 62A.4-104.~~

~~"Depository bank." RCW 62A.4-105.~~

~~"Documentary draft." RCW 62A.4-104.~~

~~"Intermediary bank." RCW 62A.4-105.~~

~~"Item." RCW 62A.4-104.~~

~~"Midnight deadline." RCW 62A.4-104.~~

~~"Payor bank." RCW 62A.4-105.~~

~~(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.))~~

SUBJECT MATTER. (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

Sec. 5. RCW 62A.3-103 and 1965 ex.s. c 157 s 3-103 are each amended to read as follows:

~~((LIMITATIONS ON SCOPE OF ARTICLE. (1) This Article does not apply to money, documents of title or investment securities.~~

~~(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9).))~~

DEFINITIONS. (a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

<u>"Acceptance"</u>	<u>RCW 62A.3-409</u>
<u>"Accommodated party"</u>	<u>RCW 62A.3-419</u>
<u>"Accommodation party"</u>	<u>RCW 62A.3-419</u>
<u>"Alteration"</u>	<u>RCW 62A.3-407</u>
<u>"Anomalous indorsement"</u>	<u>RCW 62A.3-205</u>
<u>"Blank indorsement"</u>	<u>RCW 62A.3-205</u>
<u>"Cashier's check"</u>	<u>RCW 62A.3-104</u>
<u>"Certificate of deposit"</u>	<u>RCW 62A.3-104</u>
<u>"Certified check"</u>	<u>RCW 62A.3-409</u>
<u>"Check"</u>	<u>RCW 62A.3-104</u>
<u>"Consideration"</u>	<u>RCW 62A.3-303</u>
<u>"Draft"</u>	<u>RCW 62A.3-104</u>
<u>"Holder in due course"</u>	<u>RCW 62A.3-302</u>
<u>"Incomplete instrument"</u>	<u>RCW 62A.3-115</u>
<u>"Indorsement"</u>	<u>RCW 62A.3-204</u>
<u>"Indorser"</u>	<u>RCW 62A.3-204</u>
<u>"Instrument"</u>	<u>RCW 62A.3-104</u>
<u>"Issue"</u>	<u>RCW 62A.3-105</u>
<u>"Issuer"</u>	<u>RCW 62A.3-105</u>
<u>"Negotiable instrument"</u>	<u>RCW 62A.3-104</u>
<u>"Negotiation"</u>	<u>RCW 62A.3-201</u>
<u>"Note"</u>	<u>RCW 62A.3-104</u>
<u>"Payable at a definite time"</u>	<u>RCW 62A.3-108</u>
<u>"Payable on demand"</u>	<u>RCW 62A.3-108</u>
<u>"Payable to bearer"</u>	<u>RCW 62A.3-109</u>
<u>"Payable to order"</u>	<u>RCW 62A.3-109</u>
<u>"Payment"</u>	<u>RCW 62A.3-602</u>
<u>"Person entitled to enforce"</u>	<u>RCW 62A.3-301</u>
<u>"Presentment"</u>	<u>RCW 62A.3-501</u>
<u>"Reacquisition"</u>	<u>RCW 62A.3-207</u>
<u>"Special indorsement"</u>	<u>RCW 62A.3-205</u>
<u>"Teller's check"</u>	<u>RCW 62A.3-104</u>
<u>"Transfer of instrument"</u>	<u>RCW 62A.3-203</u>
<u>"Traveler's check"</u>	<u>RCW 62A.3-104</u>
<u>"Value"</u>	<u>RCW 62A.3-303</u>

(c) The following definitions in other Articles apply to this Article:

<u>"Bank"</u>	<u>RCW 62A.4-105</u>
<u>"Banking day"</u>	<u>RCW 62A.4-104</u>
<u>"Clearing house"</u>	<u>RCW 62A.4-104</u>
<u>"Collecting bank"</u>	<u>RCW 62A.4-105</u>

<u>"Depository bank"</u>	<u>RCW 62A.4-105</u>
<u>"Documentary draft"</u>	<u>RCW 62A.4-104</u>
<u>"Intermediary bank"</u>	<u>RCW 62A.4-105</u>
<u>"Item"</u>	<u>RCW 62A.4-104</u>
<u>"Payor bank"</u>	<u>RCW 62A.4-105</u>
<u>"Suspends payments"</u>	<u>RCW 62A.4-104</u>

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 6. RCW 62A.3-104 and 1965 ex.s. c 157 s 3-104 are each amended to read as follows:

~~(FORM OF NEGOTIABLE INSTRUMENTS; "DRAFT"; "CHECK"; "CERTIFICATE OF DEPOSIT"; "NOTE". (1) Any writing to be a negotiable instrument within this Article must~~

~~(a) be signed by the maker or drawer; and  
(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and~~

~~(c) be payable on demand or at a definite time; and~~

~~(d) be payable to order or to bearer.~~

~~(2) A writing which complies with the requirements of this section is~~

~~(a) a "draft" ("bill of exchange") if it is an order;~~

~~(b) a "check" if it is a draft drawn on a bank and payable on demand;~~

~~(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;~~

~~(d) a "note" if it is a promise other than a certificate of deposit.~~

~~(3) As used in other Articles of this Title, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable.))~~

NEGOTIABLE INSTRUMENT. (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.



(c) An order that meets all of the requirements of subsection (a), except subsection (a)(1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

Sec. 7. RCW 62A.3-105 and 1965 ex.s. c 157 s 3-105 are each amended to read as follows:

~~((WHEN PROMISE OR ORDER UNCONDITIONAL. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument~~

~~(a) is subject to implied or constructive conditions; or~~

~~(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or~~

~~(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or~~

~~(d) states that it is drawn under a letter of credit; or~~

~~(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or~~

~~(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or~~

~~(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or~~

~~(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.~~

~~(2) A promise or order is not unconditional if the instrument~~

~~(a) states that it is subject to or governed by any other agreement; or~~

~~(b) states that it is to be paid only out of a particular fund or source except as provided in this section.))~~

ISSUE OF INSTRUMENT. (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

Sec. 8. RCW 62A.3-106 and 1989 c 13 s 1 are each amended to read as follows:

~~(SUM CERTAIN DEFINITIONS. (1) The sum payable is a sum certain even though it is to be paid~~

~~(a) with stated interest or by stated installments; or~~

~~(b) with stated different rates of interest before and after default or a specified date; or~~

~~(c) with a stated discount or addition if paid before or after the date fixed for payment; or~~

~~(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or~~

~~(e) with costs of collection or an attorney's fee or both upon default.~~

~~(2) A rate of interest that cannot be calculated by looking only to the instrument is a stated rate of interest in subsection (1) of this section if the rate during any period is readily ascertainable by a reference in the instrument to a published statute, regulation, rule of court, generally accepted commercial or financial index, compendium of interest rates, or announced or established rate of one or more named financial institutions.~~

~~(3) Graduated, variable, annuity or price level adjusted payments are stated installments in subsection (1) of this section if such payments are provided for in the instrument.~~

~~(4) Nothing in this section shall validate any term which is otherwise illegal.))~~

UNCONDITIONAL PROMISE OR ORDER. (a) Except as provided in this section, for the purposes of RCW 62A.3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of RCW 62A.3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of RCW 62A.3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Sec. 9. RCW 62A.3-107 and 1965 ex.s. c 157 s 3-107 are each amended to read as follows:

~~((MONEY. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.~~

~~(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.))~~

INSTRUMENT PAYABLE IN FOREIGN MONEY. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

**Sec. 10.** RCW 62A.3-108 and 1965 ex.s. c 157 s 3-108 are each amended to read as follows:

~~(PAYABLE ON DEMAND. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.)~~

PAYABLE ON DEMAND OR AT DEFINITE TIME. (a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

**Sec. 11.** RCW 62A.3-109 and 1989 c 13 s 2 are each amended to read as follows:

~~(DEFINITE TIME. (1) An instrument is payable at a definite time if by its terms it is payable~~

~~(a) on or before a stated date or at a fixed period after a stated date; or~~

~~(b) at a fixed period after sight; or~~

~~(c) at a definite time subject to any acceleration; or~~

~~(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event; or~~

~~(e) by variable, graduated, annuity or price-level adjusted payments.~~

~~(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.)~~

PAYABLE TO BEARER OR TO ORDER. (a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person

or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to RCW 62A.3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to RCW 62A.3-205(b).

**Sec. 12.** RCW 62A.3-110 and 1965 ex.s. c 157 s 3-110 are each amended to read as follows:

~~(PAYABLE TO ORDER. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of~~

~~(a) the maker or drawer; or~~

~~(b) the drawee; or~~

~~(c) a payee who is not maker, drawer or drawee; or~~

~~(d) two or more payees together or in the alternative; or~~

~~(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or~~

~~(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or~~

~~(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.~~

~~(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."~~

~~(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.)~~

IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE. (a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Sec. 13. RCW 62A.3-111 and 1965 ex.s. c 157 s 3-111 are each amended to read as follows:

~~((PAYABLE TO BEARER. An instrument is payable to bearer when by its terms it is payable to~~

~~(a) bearer or the order of bearer; or~~

~~(b) a specified person or bearer; or~~

~~(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.))~~

PLACE OF PAYMENT. Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

**Sec. 14.** RCW 62A.3-112 and 1965 ex.s. c 157 s 3-112 are each amended to read as follows:

~~((TERMS AND OMISSIONS NOT AFFECTING NEGOTIABILITY. (1) The negotiability of an instrument is not affected by~~

~~(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or~~

~~(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or~~

~~(c) a promise or power to maintain or protect collateral or to give additional collateral; or~~

~~(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or~~

~~(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or~~

~~(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or~~

~~(g) a statement in a draft drawn in a set of parts (RCW 62A.3-801) to the effect that the order is effective only if no other part has been honored.~~

~~(2) Nothing in this section shall validate any term which is otherwise illegal.))~~

INTEREST. (a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

**Sec. 15.** RCW 62A.3-113 and 1965 ex.s. c 157 s 3-113 are each amended to read as follows:

~~((SEAL. An instrument otherwise negotiable is within this Article even though it is under a seal.))~~

DATE OF INSTRUMENT. (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in RCW 62A.4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

**Sec. 16.** RCW 62A.3-114 and 1965 ex.s. c 157 s 3-114 are each amended to read as follows:

~~((DATE, ANTEDATING, POSTDATING. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.~~

~~(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.~~

~~(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.))~~

CONTRADICTORY TERMS OF INSTRUMENT. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

**Sec. 17.** RCW 62A.3-115 and 1965 ex.s. c 157 s 3-115 are each amended to read as follows:

~~((INCOMPLETE INSTRUMENTS. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.~~

~~(2) If the completion is unauthorized the rules as to material alteration apply (RCW 62A.3-407), even though the paper was not delivered by the maker or drawer, but the burden of establishing that any completion is unauthorized is on the party so asserting.))~~

INCOMPLETE INSTRUMENT. (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under RCW 62A.3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under RCW 62A.3-104, but, after completion, the requirements of RCW 62A.3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under RCW 62A.3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

**Sec. 18.** RCW 62A.3-116 and 1965 ex.s. c 157 s 3-116 are each amended to read as follows:

~~((INSTRUMENTS PAYABLE TO TWO OR MORE PERSONS. An instrument payable to the order of two or more persons~~



~~(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;~~

~~(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.))~~

JOINT AND SEVERAL LIABILITY; CONTRIBUTION. (a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in RCW 62A.3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

Sec. 19. RCW 62A.3-117 and 1965 ex.s. c 157 s 3-117 are each amended to read as follows:

~~((INSTRUMENTS PAYABLE WITH WORDS OF DESCRIPTION. An instrument made payable to a named person with the addition of words describing him~~

~~(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;~~

~~(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;~~

~~(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.))~~

OTHER AGREEMENTS AFFECTING INSTRUMENT. Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Sec. 20. RCW 62A.3-118 and 1965 ex.s. c 157 s 3-118 are each amended to read as follows:

~~((AMBIGUOUS TERMS AND RULES OF CONSTRUCTION. The following rules apply to every instrument:~~

~~(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.~~

~~(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.~~

~~(c) Words control figures except that if the words are ambiguous figures control.~~

~~(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.~~

~~(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."~~

~~(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with RCW 62A.3-604 tenders full payment when the instrument is due.)~~

STATUTE OF LIMITATIONS. (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the

acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues.

Sec. 21. RCW 62A.3-119 and 1965 ex.s. c 157 s 3-119 are each amended to read as follows:

~~((OTHER WRITINGS AFFECTING INSTRUMENT. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.~~

~~(2) A separate agreement does not affect the negotiability of an instrument.))~~

NOTICE OF RIGHT TO DEFEND ACTION. In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

## PART 2

### NEGOTIATION, TRANSFER, AND ((NEGOTIATION)) INDORSEMENT

Sec. 22. RCW 62A.3-201 and 1965 ex.s. c 157 s 3-201 are each amended to read as follows:

~~((TRANSFER: RIGHT TO INDORSEMENT. (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.~~

~~(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.~~

~~(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.))~~

NEGOTIATION. (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

Sec. 23. RCW 62A.3-202 and 1965 ex.s. c 157 s 3-202 are each amended to read as follows:

~~((NEGOTIATION. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.~~

~~(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.~~

~~(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.~~

~~(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.))~~

NEGOTIATION SUBJECT TO RESCISSION. (a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Sec. 24. RCW 62A.3-203 and 1965 ex.s. c 157 s 3-203 are each amended to read as follows:

~~((WRONG OR MISSPELLED NAME. Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.))~~

TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire

rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

**Sec. 25.** RCW 62A.3-204 and 1965 ex.s. c 157 s 3-204 are each amended to read as follows:

~~((SPECIAL INDORSEMENT; BLANK INDORSEMENT. (1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.~~

~~(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.~~

~~(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.))~~

INDORSEMENT. (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Sec. 26. RCW 62A.3-205 and 1965 ex.s. c 157 s 3-205 are each amended to read as follows:

~~(RESTRICTIVE INDORSEMENTS. An indorsement is restrictive which either~~

- ~~(a) is conditional; or~~
- ~~(b) purports to prohibit further transfer of the instrument; or~~
- ~~(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or~~
- ~~(d) otherwise states that it is for the benefit or use of the indorser or of another person;))~~

SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT. (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in RCW 62A.3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

Sec. 27. RCW 62A.3-206 and 1965 ex.s. c 157 s 3-206 are each amended to read as follows:

~~(EFFECT OF RESTRICTIVE INDORSEMENT. (1) No restrictive indorsement prevents further transfer or negotiation of the instrument.~~

~~(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.~~

~~(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course.~~

~~(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of RCW 62A.3-304).)~~

RESTRICTIVE INDORSEMENT. (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in RCW 62A.4-201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in subsection (c)(3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in RCW 62A.3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

Sec. 28. RCW 62A.3-207 and 1965 ex.s. c 157 s 3-207 are each amended to read as follows:

~~((NEGOTIATION EFFECTIVE ALTHOUGH IT MAY BE RESCINDED.  
(1) Negotiation is effective to transfer the instrument although the negotiation is  
(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or  
(b) obtained by fraud, duress or mistake of any kind; or  
(c) part of an illegal transaction; or  
(d) made in breach of duty.  
(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.))~~

REACQUISITION. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

### PART 3

#### ~~((RIGHTS OF A HOLDER))~~ ENFORCEMENT OF INSTRUMENTS

Sec. 29. RCW 62A.3-301 and 1965 ex.s. c 157 s 3-301 are each amended to read as follows:

~~((RIGHTS OF A HOLDER. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in~~



RCW 62A.3-603 on payment or satisfaction, discharge it or enforce payment in his own name.))

PERSON ENTITLED TO ENFORCE INSTRUMENT. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 (section 37 of this act) or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

**Sec. 30.** RCW 62A.3-302 and 1965 ex.s. c 157 s 3-302 are each amended to read as follows:

~~HOLDER IN DUE COURSE. ((1) A holder in due course is a holder who takes the instrument~~

~~(a) for value; and~~

~~(b) in good faith; and~~

~~(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.~~

~~(2) A payee may be a holder in due course.~~

~~(3) A holder does not become a holder in due course of an instrument:~~

~~(a) by purchase of it at judicial sale or by taking it under legal process; or~~

~~(b) by acquiring it in taking over an estate; or~~

~~(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.~~

~~(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.))~~

(a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any party has a defense or claim in recoupment described in RCW 62A.3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course

of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under RCW 62A.3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

**Sec. 31.** RCW 62A.3-303 and 1965 ex.s. c 157 s 3-303 are each amended to read as follows:

~~((TAKING FOR VALUE. A holder takes the instrument for value~~

~~(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or~~

~~(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or~~

~~(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.))~~

VALUE AND CONSIDERATION. (a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument

is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

**Sec. 32.** RCW 62A.3-304 and 1965 ex.s. c 157 s 3-304 are each amended to read as follows:

~~(NOTICE TO PURCHASER. (1) The purchaser has notice of a claim or defense if~~

~~(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or~~

~~(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.~~

~~(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.~~

~~(3) The purchaser has notice that an instrument is overdue if he has reason to know~~

~~(a) that any part of the principal amount is overdue or that there is an unsecured default in payment of another instrument of the same series; or~~

~~(b) that acceleration of the instrument has been made; or~~

~~(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.~~

~~(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim~~

~~(a) that the instrument is antedated or postdated;~~

~~(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;~~

~~(c) that any party has signed for accommodation;~~

~~(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;~~

~~(e) that any person negotiating the instrument is or was a fiduciary;~~

~~(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.~~

~~(5) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.~~

~~(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.))~~

OVERDUE INSTRUMENT. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Sec. 33. RCW 62A.3-305 and 1965 ex.s. c 157 s 3-305 are each amended to read as follows:

~~((RIGHTS OF A HOLDER IN DUE COURSE. To the extent that a holder is a holder in due course he takes the instrument free from~~

~~(1) all claims to it on the part of any person; and~~

~~(2) all defenses of any party to the instrument with whom the holder has not dealt except~~

~~(a) infancy, to the extent that it is a defense to a simple contract; and~~

~~(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and~~

~~(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and~~

~~(d) discharge in insolvency proceedings; and~~

~~(e) any other discharge of which the holder has notice when he takes the instrument.))~~

DEFENSES AND CLAIMS IN RECOUPMENT. (a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge

nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (RCW 62A.3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

**Sec. 34.** RCW 62A.3-306 and 1965 ex.s. c 157 s 3-306 are each amended to read as follows:

~~((RIGHTS OF ONE NOT HOLDER IN DUE COURSE. Unless he has the rights of a holder in due course any person takes the instrument subject to~~

~~(a) all valid claims to it on the part of any person; and~~

~~(b) all defenses of any party which would be available in an action on a simple contract; and~~

~~(c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (RCW 62A.3-408); and~~

~~(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third~~

~~person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.))~~

CLAIMS TO AN INSTRUMENT. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

Sec. 35. RCW 62A.3-307 and 1965 ex.s. c 157 s 3-307 are each amended to read as follows:

~~((BURDEN OF ESTABLISHING SIGNATURES, DEFENSES AND DUE COURSE. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue~~

~~(a) the burden of establishing it is on the party claiming under the signature; but~~

~~(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.~~

~~(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.~~

~~(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.))~~

NOTICE OF BREACH OF FIDUCIARY DUTY. (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subsection (a)(1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

**NEW SECTION. Sec. 36.** A new section is added to Title 62A RCW, to be codified as RCW 62A.3-308, to read as follows:

**PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE.** (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under RCW 62A.3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under RCW 62A.3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

**NEW SECTION. Sec. 37.** A new section is added to Title 62A RCW, to be codified as RCW 62A.3-309, to read as follows:

**ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.** (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful

possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 (section 36 of this act) applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

NEW SECTION. Sec. 38. A new section is added to Title 62A RCW, to be codified as RCW 62A.3-310, to read as follows:

**EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH TAKEN.**

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subsection (b)(4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the



amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

**NEW SECTION. Sec. 39.** A new section is added to Title 62A RCW, to be codified as RCW 62A.3-311, to read as follows:

**ACCORD AND SATISFACTION BY USE OF INSTRUMENT.** (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subsection (c)(2) does not apply if the claimant is an organization that sent a statement complying with subsection (c)(1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

**NEW SECTION. Sec. 40.** A new section is added to Title 62A RCW, to be codified as RCW 62A.3-312, to read as follows:

**LOST, DESTROYED, OR STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK.** (a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amendable to service of process.

(4) "Obligated bank" means the insurer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to RCW 62A.4-302(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under this section.

PART 4  
LIABILITY OF PARTIES

**Sec. 41.** RCW 62A.3-401 and 1965 ex.s. c 157 s 3-401 are each amended to read as follows:

**SIGNATURE.** ~~((1-1))~~ (a) A person is not liable on an instrument unless (his signature appears thereon) (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under RCW 62A.3-402.

~~((2))~~ (b) A signature (is) may be made (by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature) (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

**Sec. 42.** RCW 62A.3-402 and 1965 ex.s. c 157 s 3-402 are each amended to read as follows:

~~((SIGNATURE IN AMBIGUOUS CAPACITY. Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.))~~

**SIGNATURE BY REPRESENTATIVE.** (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument

unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Sec. 43. RCW 62A.3-403 and 1965 ex.s. c 157 s 3-403 are each amended to read as follows:

~~((SIGNATURE BY AUTHORIZED REPRESENTATIVE. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.~~

~~(2) An authorized representative who signs his own name to an instrument~~

~~(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;~~

~~(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.~~

~~(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.))~~

UNAUTHORIZED SIGNATURE. (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

Sec. 44. RCW 62A.3-404 and 1965 ex.s. c 157 s 3-404 are each amended to read as follows:

~~((UNAUTHORIZED SIGNATURES. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.~~

~~(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.))~~

IMPOSTORS; FICTITIOUS PAYEES. (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (RCW 62A.3-110 (a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Sec. 45. RCW 62A.3-405 and 1965 ex.s. c 157 s 3-405 are each amended to read as follows:

~~((IMPOSTORS; SIGNATURE IN NAME OF PAYEE. (1) An indorsement by any person in the name of a named payee is effective if~~

~~(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or~~

~~(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or~~

~~(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.~~

~~(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.))~~

EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE. (a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

**Sec. 46.** RCW 62A.3-406 and 1965 ex.s. c 157 s 3-406 are each amended to read as follows:

**NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE OR ALTERATION ((OR UNAUTHORIZED SIGNATURE)) OF INSTRUMENT.**  
~~((Any))~~ (a) A person ((who by his negligence substantially)) whose failure to exercise ordinary care contributes to ((a material)) an alteration of ((the)) an instrument or to the making of ((an unauthorized signature)) a forged signature on an instrument is precluded from asserting the alteration or ((lack of authority)) the forgery against a ((holder in due course or against a drawee or other payor)) person who, in good faith, pays the instrument ((in good faith and in accordance

with the reasonable commercial standards of the drawee's or payor's business)) or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

Sec. 47. RCW 62A.3-407 and 1965 ex.s. c 157 s 3-407 are each amended to read as follows:

~~ALTERATION. ((1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in~~

~~(a) the number or relations of the parties; or~~

~~(b) an incomplete instrument, by completing it otherwise than as authorized;~~

~~or~~

~~(c) the writing as signed, by adding to it or by removing any part of it.~~

~~(2) As against any person other than a subsequent holder in due course~~

~~(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;~~

~~(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.~~

~~(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.)) (a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.~~

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

Sec. 48. RCW 62A.3-408 and 1965 ex.s. c 157 s 3-408 are each amended to read as follows:

~~((CONSIDERATION.—Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (RCW 62A.3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.))~~

DRAWEE NOT LIABLE ON UNACCEPTED DRAFT. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

Sec. 49. RCW 62A.3-409 and 1965 ex.s. c 157 s 3-409 are each amended to read as follows:

~~((DRAFT NOT AN ASSIGNMENT. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.~~

~~(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.))~~

ACCEPTANCE OF DRAFT; CERTIFIED CHECK. (a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Sec. 50. RCW 62A.3-410 and 1965 ex.s. c 157 s 3-410 are each amended to read as follows:

~~((DEFINITION AND OPERATION OF ACCEPTANCE. (1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be~~



~~written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.~~

~~(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.~~

~~(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.))~~

ACCEPTANCE VARYING DRAFT. (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

**Sec. 51.** RCW 62A.3-411 and 1965 ex.s. c 157 s 3-411 are each amended to read as follows:

~~((CERTIFICATION OF A CHECK. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.~~

~~(2) Unless otherwise agreed a bank has no obligation to certify a check.~~

~~(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.))~~

REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS. (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

Sec. 52. RCW 62A.3-412 and 1965 ex.s. c 157 s 3-412 are each amended to read as follows:

~~((ACCEPTANCE VARYING DRAFT. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.~~

~~(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.~~

~~(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.))~~

OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under RCW 62A.3-415.

Sec. 53. RCW 62A.3-413 and 1965 ex.s. c 157 s 3-413 are each amended to read as follows:

~~((CONTRACT OF MAKER, DRAWER AND ACCEPTOR. (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to RCW 62A.3-115 on incomplete instruments.~~

~~(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.~~

~~(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.))~~

OBLIGATION OF ACCEPTOR. (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under RCW 62A.3-414 or 62A.3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the

instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

Sec. 54. RCW 62A.3-414 and 1965 ex.s. c 157 s 3-414 are each amended to read as follows:

~~((CONTRACT OF INDORSER; ORDER OF LIABILITY. (1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.~~

~~(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.))~~

OBLIGATION OF DRAWER. (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under RCW 62A.3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under RCW 62A.3-415 (a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

Sec. 55. RCW 62A.3-415 and 1965 ex.s. c 157 s 3-415 are each amended to read as follows:

~~((CONTRACT OF ACCOMMODATION PARTY. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.~~

~~(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.~~

~~(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.~~

~~(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.~~

~~(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.)~~

OBLIGATION OF INDORSER. (a) Subject to subsections (b), (c), (d), and (e) and to RCW 62A.3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by RCW 62A.3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

Sec. 56. RCW 62A.3-416 and 1965 ex.s. c 157 s 3-416 are each amended to read as follows:

~~((CONTRACT OF GUARANTOR. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.~~

~~(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against~~

~~the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.~~

~~(3) Words of guaranty which do not otherwise specify guarantee payment.~~

~~(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.~~

~~(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.~~

~~(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds:))~~

TRANSFER WARRANTIES. (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 57. RCW 62A.3-417 and 1965 ex.s. c 157 s 3-417 are each amended to read as follows:

~~((WARRANTIES ON PRESENTMENT AND TRANSFER. (1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that~~

~~(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and~~

~~(e) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or~~

~~(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.~~

~~(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that~~

~~(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and~~

~~(b) all signatures are genuine or authorized; and~~

~~(c) the instrument has not been materially altered; and~~

~~(d) no defense of any party is good against him; and~~

~~(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.~~

~~(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.~~

~~(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.)~~

PRESENTMENT WARRANTIES. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 58. RCW 62A.3-418 and 1965 ex.s. c 157 s 3-418 are each amended to read as follows:

~~((FINALITY OF PAYMENT OR ACCEPTANCE. Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor~~

of a holder in due course, or a person who has in good faith changed his position in reliance on the payment:))

PAYMENT OR ACCEPTANCE BY MISTAKE. (a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to RCW 62A.4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by RCW 62A.3-417 or 62A.4-407.

(d) Notwithstanding RCW 62A.4-213, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Sec. 59. RCW 62A.3-419 and 1965 ex.s. c 157 s 3-419 are each amended to read as follows:

~~((CONVERSION OF INSTRUMENT; INNOCENT REPRESENTATIVE.~~

~~(1) An instrument is converted when~~

~~(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or~~

~~(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or~~

~~(c) it is paid on a forged indorsement.~~

~~(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.~~

~~(3) Subject to the provisions of this Title concerning restrictive indorsements a representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf~~



~~of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.~~

~~(4) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (RCW 62A.3-205 and RCW 62A.3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.)~~

INSTRUMENTS SIGNED FOR ACCOMMODATION. (a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in RCW 62A.3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

NEW SECTION. Sec. 60. A new section is added to Title 62A RCW, to be codified as RCW 62A.3-420, to read as follows:

**CONVERSION OF INSTRUMENT.** (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

#### PART 5

#### ~~((PRESENTMENT, NOTICE OF)) DISHONOR ((AND PROTEST))~~

**Sec. 61.** RCW 62A.3-501 and 1965 ex.s. c 157 s 3-501 are each amended to read as follows:

~~((WHEN PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST NECESSARY OR PERMISSIBLE. (1) Unless excused (RCW 62A.3-511) presentment is necessary to charge secondary parties as follows:~~

~~(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;~~

~~(b) presentment for payment is necessary to charge any indorser;~~

~~(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b);~~

~~(2) Unless excused (RCW 62A.3-511)~~

~~(a) notice of any dishonor is necessary to charge any indorser;~~

~~(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b);~~

~~(3) Unless excused (RCW 62A.3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor~~

~~of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.~~

~~(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.)~~

PRESENTMENT. (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearinghouse rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

Sec. 62. RCW 62A.3-502 and 1965 ex.s. c 157 s 3-502 are each amended to read as follows:

~~(UNEXCUSED DELAY; DISCHARGE. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due~~

~~(a) any indorser is discharged; and~~

~~(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written~~

~~assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.~~

~~(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.))~~

DISHONOR. (a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and subsection (a)(2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under RCW 62A.4-301 or 62A.4-302, or becomes accountable for the amount of the check under RCW 62A.4-302.

(2) If a draft is payable on demand and subsection (b)(1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b) (2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by subsection (b) (2), (3), and (4).

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; or

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under RCW 62A.3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Sec. 63. RCW 62A.3-503 and 1965 ex.s. c 157 s 3-503 are each amended to read as follows:

~~((TIME OF PRESENTMENT. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:~~

~~(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;~~

~~(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;~~

~~(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;~~

~~(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;~~

~~(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.~~

~~(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:~~

~~(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and~~

~~(b) with respect to the liability of an endorser, seven days after his indorsement.~~

~~(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.~~

~~(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.))~~

NOTICE OF DISHONOR. (a) The obligation of an indorser stated in RCW 62A.3-415(a) and the obligation of a drawer stated in RCW 62A.3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under RCW 62A.3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to RCW 62A.3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

Sec. 64. RCW 62A.3-504 and 1965 ex.s. c 157 s 3-504 are each amended to read as follows:

~~((HOW PRESENTMENT MADE. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.~~

~~(2) Presentment may be made~~

~~(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or~~

~~(b) through a clearing house; or~~

~~(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.~~

~~(3) It may be made~~

~~(a) to any one of two or more makers, acceptors, drawees or other payors; or~~

~~(b) to any person who has authority to make or refuse the acceptance or payment.~~

~~(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.~~

~~(5) In the cases described in RCW 62A.4-210 presentment may be made in the manner and with the result stated in that section.))~~

EXCUSED PRESENTMENT AND NOTICE OF DISHONOR. (a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not

to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

**Sec. 65.** RCW 62A.3-505 and 1965 ex.s. c 157 s 3-505 are each amended to read as follows:

~~((RIGHTS OF PARTY TO WHOM PRESENTMENT IS MADE. (1) The party to whom presentment is made may without dishonor require~~

~~(a) exhibition of the instrument; and~~

~~(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and~~

~~(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and~~

~~(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.~~

~~(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.))~~

EVIDENCE OF DISHONOR. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) that purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

**Sec. 66.** RCW 62A.3-512 and 1990 c 203 s 2 are each amended to read as follows:

~~(No)~~ A person may not record the number of a credit card given as identification under RCW ~~((62A.3-505(1)(b)))~~ 62A.3-501(a)(2) or given as proof of credit worthiness when payment for goods or services is made by check or draft. Nothing in this section prohibits the recording of the number of a credit card given in lieu of a deposit to secure payment in the event of a default, loss, damage, or other occurrence.

**Sec. 67.** RCW 62A.3-515 and 1991 c 168 s 1 are each amended to read as follows:

~~((1) Whenever)~~ (a) If a check as defined in RCW 62A.3-104 ~~((has been))~~ is dishonored by nonacceptance or nonpayment, the payee or holder of the check is entitled to collect a reasonable handling fee for each ~~((such))~~ instrument. ~~((When such))~~ If the check ~~((has))~~ is not ~~((been))~~ paid within fifteen days and after the holder of ~~((such))~~ the check sends ~~((such))~~ a notice of dishonor as provided by RCW 62A.3-520 to the drawer at ~~((his or her))~~ the drawer's last known address, ~~((then))~~ and if the instrument does not provide for the payment of interest, or collection costs and attorneys fees, the drawer of ~~((such))~~ the instrument ~~((shall also be))~~ is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is ~~((the lesser))~~ less. In addition, in the event of court action on the check, the court, after ~~((such))~~ notice and the expiration of ~~((said))~~ the fifteen days, shall award a reasonable attorneys fee, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the holder of the check. This section ~~((shall))~~ does not apply to ~~((any))~~ an instrument ~~((which has been))~~ that is dishonored by reason of ~~((any))~~ a justifiable stop payment order.

~~((2)(a))~~ (b)(1) Subsequent to the commencement of ~~((the))~~ an action on the check (subsection (a)) but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the ~~((sum of the))~~ face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court and service costs.

~~((b))~~ (2) Nothing in this section precludes the right to commence action in ~~((any))~~ a court under chapter 12.40 RCW for small claims.

**Sec. 68.** RCW 62A.3-520 and 1991 c 168 s 2 are each amended to read as follows:

The notice of dishonor shall be sent by mail to the drawer at ~~((his or her))~~ the drawer's last known address, and ~~((said))~~ the notice shall be substantially in the following form:

#### NOTICE OF DISHONOR OF CHECK



A check drawn by you and made payable by you to . . . . . in the amount of . . . . . has not been accepted for payment by . . . . ., which is the drawee bank designated on your check. This check is dated . . . . ., and it is numbered, No. . . . .

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

- (1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;
- (2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
- (3) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is postmarked.

You are advised to make your payment to . . . . . at the following address:  
. . . . .

**Sec. 69.** RCW 62A.3-522 and 1981 c 254 s 3 are each amended to read as follows:

In addition to sending a notice of dishonor to the drawer of the check under RCW 62A.3-520, the holder of the check shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail (~~shall~~) must be attached to a copy of the notice of dishonor and (~~shall~~) must be substantially in the following form:

**AFFIDAVIT OF SERVICE BY MAIL**

I, . . . . ., hereby certify that on the . . . . . day of . . . . ., 19. . ., a copy of the foregoing Notice was served on . . . . . by mailing via the United States Postal Service, postage prepaid, at . . . . ., Washington.

Dated: . . . . .  
(Signature)

The holder shall retain the affidavit (~~shall be retained~~) with the check but shall file a copy of the affidavit (~~shall be filed~~) with the clerk of the court in which an action on the check is commenced.

**Sec. 70.** RCW 62A.3-525 and 1981 c 254 s 4 are each amended to read as follows:

No interest, collection costs, and attorneys' fees, except handling fees, (~~shall be recovered~~) are recoverable on any dishonored check under the provisions of RCW 62A.3-515 where the holder of (~~such~~) the check or any agent, employee, or assign of the holder has demanded:

(1) Interest or collection costs in excess of that provided by RCW 62A.3-515; or

(2) Interest or collection costs prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or

(3) Attorneys' fees either without having ((sueh)) the fees set by the court, or prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520.

## PART 6

### DISCHARGE AND PAYMENT

**Sec. 71.** RCW 62A.3-601 and 1965 ex.s. c 157 s 3-601 are each amended to read as follows:

~~((DISCHARGE OF PARTIES. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on~~

~~(a) payment or satisfaction (RCW 62A.3-603); or~~

~~(b) tender of payment (RCW 62A.3-604); or~~

~~(c) cancellation or renunciation (RCW 62A.3-605); or~~

~~(d) impairment of right of recourse or of collateral (RCW 62A.3-606); or~~

~~(e) reacquisition of the instrument by a prior party (RCW 62A.3-208); or~~

~~(f) fraudulent and material alteration (RCW 62A.3-407); or~~

~~(g) certification of a check (RCW 62A.3-411); or~~

~~(h) acceptance varying a draft (RCW 62A.3-412); or~~

~~(i) unexecuted delay in presentment or notice of dishonor or protest (RCW 62A.3-502).~~

~~(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.~~

~~(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument~~

~~(a) reacquires the instrument in his own right; or~~

~~(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (RCW 62A.3-606).)~~

DISCHARGE AND EFFECT OF DISCHARGE. (a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

**Sec. 72.** RCW 62A.3-602 and 1965 ex.s. c 157 s 3-602 are each amended to read as follows:

~~((EFFECT OF DISCHARGE AGAINST HOLDER IN DUE COURSE. No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.))~~

PAYMENT. (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under RCW 62A.3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under RCW 62A.3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

**Sec. 73.** RCW 62A.3-603 and 1965 ex.s. c 157 s 3-603 are each amended to read as follows:

~~((PAYMENT OR SATISFACTION. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability~~

~~(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or~~

~~(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.~~

~~(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (RCW 62A.3-201.))~~

TENDER OF PAYMENT. (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect

of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Sec. 74. RCW 62A.3-604 and 1965 ex.s. c 157 s 3-604 are each amended to read as follows:

~~((TENDER OF PAYMENT. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.~~

~~(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.~~

~~(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.))~~

DISCHARGE BY CANCELLATION OR RENUNCIATION. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

Sec. 75. RCW 62A.3-605 and 1965 ex.s. c 157 s 3-605 are each amended to read as follows:

~~((CANCELLATION AND RENUNCIATION. (1) The holder of an instrument may even without consideration discharge any party~~

~~(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or~~

~~(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.~~

~~(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto-)~~

DISCHARGE OF INDORSERS AND ACCOMMODATION PARTIES. (a) In this section, the term "indorser" includes a drawer having the obligation described in RCW 62A.3-414(d).

(b) Discharge, under RCW 62A.3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several

liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under RCW 62A.3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

NEW SECTION. **Sec. 76.** The following acts or parts of acts are each repealed:

- (1) RCW 62A.3-120 and 1965 ex.s. c 157 s 3-120;
- (2) RCW 62A.3-121 and 1965 ex.s. c 157 s 3-121;
- (3) RCW 62A.3-122 and 1965 ex.s. c 157 s 3-122;
- (4) RCW 62A.3-208 and 1965 ex.s. c 157 s 3-208;
- (5) RCW 62A.3-506 and 1965 ex.s. c 157 s 3-506;
- (6) RCW 62A.3-507 and 1965 ex.s. c 157 s 3-507;
- (7) RCW 62A.3-508 and 1965 ex.s. c 157 s 3-508;
- (8) RCW 62A.3-509 and 1965 ex.s. c 157 s 3-509;
- (9) RCW 62A.3-510 and 1965 ex.s. c 157 s 3-510;
- (10) RCW 62A.3-511 and 1965 ex.s. c 157 s 3-511;
- (11) RCW 62A.3-606 and 1965 ex.s. c 157 s 3-606;
- (12) RCW 62A.3-701 and 1965 ex.s. c 157 s 3-701;
- (13) RCW 62A.3-801 and 1965 ex.s. c 157 s 3-801;
- (14) RCW 62A.3-802 and 1965 ex.s. c 157 s 3-802;
- (15) RCW 62A.3-803 and 1965 ex.s. c 157 s 3-803;
- (16) RCW 62A.3-804 and 1965 ex.s. c 157 s 3-804; and
- (17) RCW 62A.3-805 and 1965 ex.s. c 157 s 3-805.

#### ARTICLE 4

#### BANK DEPOSITS AND COLLECTIONS

#### PART 1

#### GENERAL PROVISIONS AND DEFINITIONS

**Sec. 77.** RCW 62A.4-101 and 1965 ex.s. c 157 s 4-101 are each amended to read as follows:

SHORT TITLE. This Article (~~shall be known and~~) may be cited as Uniform Commercial Code—Bank Deposits and Collections.

Sec. 78. RCW 62A.4-102 and 1965 ex.s. c 157 s 4-102 are each amended to read as follows:

APPLICABILITY. ~~((1))~~ (a) To the extent that items within this Article are also within ~~(the scope of)~~ Articles 3 and 8, they are subject to ~~(the provisions of)~~ those Articles. ~~(In the event of)~~ If there is conflict ~~(the provisions of)~~, this Article governs ~~(those of)~~ Article 3, but ~~(the provisions of)~~ Article 8 governs ~~(those of)~~ this Article.

~~((2))~~ (b) The liability of a bank for action or non-action with respect to ~~(any)~~ an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Sec. 79. RCW 62A.4-103 and 1965 ex.s. c 157 s 4-103 are each amended to read as follows:

VARIATION BY AGREEMENT; MEASURE OF DAMAGES; ~~(CERTAIN)~~ ACTION CONSTITUTING ORDINARY CARE. ~~((1))~~ (a) The effect of the provisions of this Article may be varied by agreement ~~(except that no agreement can)~~, but the parties to the agreement cannot disclaim a bank's responsibility for its ~~(own)~~ lack of good faith or failure to exercise ordinary care or ~~(can)~~ limit the measure of damages for ~~(such)~~ the lack or failure ~~(to but)~~. However, the parties may determine by agreement ~~(determine)~~ the standards by which ~~(such)~~ the bank's responsibility is to be measured if ~~(such)~~ those standards are not manifestly unreasonable.

~~((2))~~ (b) Federal Reserve regulations and operating ~~(letters)~~ circulares, clearing-house rules, and the like ~~(?)~~ have the effect of agreements under subsection ~~((1))~~ (a), whether or not specifically assented to by all parties interested in items handled.

~~((3))~~ (c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating ~~(letters constitutes)~~ circulares is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie ~~(constitutes)~~ the exercise of ordinary care.

~~((4))~~ (d) The specification or approval of certain procedures by this Article ~~(does)~~ is not ~~(constitute)~~ disapproval of other procedures ~~(which)~~ that may be reasonable under the circumstances.

~~((5))~~ (e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount ~~(which)~~ that could not have been realized by the ~~(use)~~ exercise of ordinary care ~~(, and~~

where)). If there is also bad faith it includes any other damages(~~(-if any, suffered by)~~) the party suffered as a proximate consequence.

Sec. 80. RCW 62A.4-104 and 1981 c 122 s 1 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. ~~((+))~~ (a) In this Article, unless the context otherwise requires:

~~((+))~~ (1) "Account" means any deposit or credit account with a bank (~~and includes~~), including a (~~checking~~) demand, time, (~~interest or~~) savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

~~((b))~~ (2) "Afternoon" means the period of a day between noon and midnight;

~~((e))~~ (3) "Banking day" means (~~that~~) the part of (~~any~~) a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

~~((d))~~ (4) "Clearing house" means (~~any~~) an association of banks or other payors regularly clearing items;

~~((e))~~ (5) "Customer" means (~~any~~) a person having an account with a bank or for whom a bank has agreed to collect items (~~and includes~~), including a bank (~~carrying~~) that maintains an account (~~with~~) at another bank;

~~((f))~~ (6) "Documentary draft" means (~~any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft~~) a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

~~((g))~~ (9) "Item" means (~~any~~) an instrument (~~for the~~) or a promise or order to pay money handled by a bank for collection or payment (~~of money even though it is not negotiable but does not include money~~). The term does not include a payment order governed by Article 4A or a credit or debit card slip;

~~((h))~~ (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

~~((i))~~ "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

~~((j))~~ (11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as (~~instructed~~) agreed. A settlement may be either provisional or final;



~~((4))~~ (12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

~~((2))~~ (b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment" section 86 of this act.

"Bank" RCW 62A.4-105.

"Collecting bank" RCW 62A.4-105.

"Depository bank" RCW 62A.4-105.

"Intermediary bank" RCW 62A.4-105.

"Payor bank" RCW 62A.4-105.

"Presenting bank" RCW 62A.4-105.

~~(("Remitting bank" RCW 62A.4-105-))~~

"Presentment notice" section 86 of this act.

~~((3))~~ (c) The following definitions in other Articles apply to this Article:

"Acceptance" RCW ~~((62A.3-410))~~ 62A.3-409.

"Alteration" RCW 62A.3-407.

"Cashier's check" RCW 62A.3-104.

"Certificate of deposit" RCW 62A.3-104.

~~(("Certification" RCW 62A.3-411-))~~

"Certified check" RCW 62A.3-409.

"Check" RCW 62A.3-104.

"Draft" RCW 62A.3-104.

"Good faith" RCW 62A.3-103.

"Holder in due course" RCW 62A.3-302.

"Instrument" RCW 62A.3-104.

"Notice of dishonor" RCW ~~((62A.3-508))~~ 62A.3-503.

"Order" RCW 62A.3-103.

"Ordinary care" RCW 62A.3-103.

"Person entitled to enforce" RCW 62A.3-301.

"Presentment" RCW ~~((62A.3-504))~~ 62A.3-501.

"Promise" RCW 62A.3-103.

~~(("Protest" RCW 62A.3-509-))~~

"Prove" RCW 62A.3-103.

~~(("Secondary party" RCW 62A.3-102-))~~

"Teller's check" RCW 62A.3-104.

"Unauthorized signature" RCW 62A.3-403.

~~((4))~~ (d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 81.** RCW 62A.4-105 and 1965 ex.s. c 157 s 4-105 are each amended to read as follows:

"BANK"; "DEPOSITARY BANK"; "PAYOR BANK"; "INTERMEDIARY BANK"; "COLLECTING BANK"; ~~(("PAYOR BANK-"))~~ "PRESENTING

BANK"(~~(; "REMITTING BANK")~~). In this Article (~~(unless the context otherwise requires)~~):

~~((a))~~ (1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depository bank" means the first bank to (~~(which)~~) take an item (~~(is transferred for collection)~~) even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

~~((b))~~ (3) "Payor bank" means a bank (~~(by which an item)~~) that is (~~(payable as drawn or accepted)~~) the drawee of a draft;

~~((c))~~ (4) "Intermediary bank" means (~~(any)~~) a bank to which an item is transferred in course of collection except the depository or payor bank;

~~((d))~~ (5) "Collecting bank" means (~~(any)~~) a bank handling the item for collection except the payor bank;

~~((e))~~ (6) "Presenting bank" means (~~(any)~~) a bank presenting an item except a payor bank(~~(;~~

(f) "Remitting bank" means any payor or intermediary bank remitting for an item).

**Sec. 82.** RCW 62A.4-106 and 1965 ex.s. c 157 s 4-106 are each amended to read as follows:

~~((SEPARATE OFFICE OF A BANK. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3.))~~ PAYABLE THROUGH OR PAYABLE AT BANK; COLLECTING BANK. (a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

**Sec. 83.** RCW 62A.4-107 and 1965 ex.s. c 157 s 4-107 are each amended to read as follows:

~~((TIME OF RECEIPT OF ITEMS. (1) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.~~

~~(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.))~~ SEPARATE OFFICE OF A BANK. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3.

**Sec. 84.** RCW 62A.4-108 and 1965 ex.s. c 157 s 4-108 are each amended to read as follows:

~~((DELAYS. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.~~

~~(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.))~~ TIME OF RECEIPT OF ITEMS. (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

**Sec. 85.** RCW 62A.4-109 and 1965 ex.s. c 157 s 4-109 are each amended to read as follows:

~~((The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:~~

- ~~(a) verification of any signature;~~
- ~~(b) ascertaining that sufficient funds are available;~~
- ~~(c) affixing a "paid" or other stamp;~~
- ~~(d) entering a charge or entry to a customer's account;~~

~~(e) correcting or reversing an entry or erroneous action with respect to the item.))~~ DELAYS. (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Title for a period not

exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

NEW SECTION. Sec. 86. A new section is added to Title 62A RCW, to be codified as RCW 62A.4-110, to read as follows:

ELECTRONIC PRESENTMENT. (a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates.

NEW SECTION. Sec. 87. A new section is added to Title 62A RCW, to be codified as RCW 62A.4-111, to read as follows:

STATUTE OF LIMITATIONS. An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

PAK 2

COLLECTION OF ITEMS:

DEPOSITORY AND COLLECTING BANKS

Sec. 88. RCW 62A.4-201 and 1965 ex.s. c 157 s 4-201 are each amended to read as follows:

~~((PRESUMPTION AND DURATION OF AGENCY))~~ STATUS OF COLLECTING BANK((S)) AS AGENT AND PROVISIONAL STATUS OF CREDITS; APPLICABILITY OF ARTICLE; ITEM INDORSED "PAY ANY BANK". ~~((+))~~ (a) Unless a contrary intent clearly appears and ~~((prior to))~~ before the time that a settlement given by a collecting bank for an item is or becomes final ~~((subsection (3) of RCW 62A.4-211 and RCW 62A.4-212 and RCW 62A.4-213))~~, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate

withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and ~~((valid))~~ rights of recoupment or setoff. ~~((When))~~ If an item is handled by banks for purposes of presentment, payment ~~((and))~~, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

~~((2))~~ (b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

~~((a) until the item has been))~~ (1) Returned to the customer initiating collection; or

~~((b) until the item has been))~~ (2) Specially indorsed by a bank to a person who is not a bank.

**Sec. 89.** RCW 62A.4-202 and 1965 ex.s. c 157 s 4-202 are each amended to read as follows:

**RESPONSIBILITY FOR COLLECTION OR RETURN; WHEN ACTION** ~~((SEASONABLE))~~ TIMELY. ~~((+))~~ (a) A collecting bank must ~~((use))~~ exercise ordinary care in:

~~((a))~~ (1) Presenting an item or sending it for presentment; ~~((and~~

~~(b))~~ (2) Sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor ~~((or directly to the depository bank under subsection (2) of RCW 62A.4-212))~~ after learning that the item has not been paid or accepted, as the case may be; ~~((and~~

~~(e))~~ (3) Settling for an item when the bank receives final settlement; and

~~((d) making or providing for any necessary protest; and~~

~~(e))~~ (4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

~~((2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing-))~~ (b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

~~((3))~~ (c) Subject to subsection ~~((1)(a))~~ (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit ~~((or in the possession of others))~~.

**Sec. 90.** RCW 62A.4-203 and 1965 ex.s. c 157 s 4-203 are each amended to read as follows:

EFFECT OF INSTRUCTIONS. Subject to ~~((the provisions of))~~ Article 3 concerning conversion of instruments ~~((RCW 62A.3-419))~~ (RCW 62A.3-420 (section 60 of this act)) and ~~((the provisions of both Article 3 and this Article concerning))~~ restrictive indorsements (RCW 62A.3-206), only a collecting bank's transferor can give instructions ~~((which))~~ that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to ~~((such))~~ the instructions or in accordance with any agreement with its transferor.

Sec. 91. RCW 62A.4-204 and 1965 ex.s. c 157 s 4-204 are each amended to read as follows:

METHODS OF SENDING AND PRESENTING; SENDING ~~((DIRECT))~~ DIRECTLY TO PAYOR BANK. ~~((+))~~ (a) A collecting bank ~~((must))~~ shall send items by a reasonably prompt method, taking into consideration ~~((any))~~ relevant instructions, the nature of the item, the number of ~~((such))~~ those items on hand, ~~((and))~~ the cost of collection involved, and the method generally used by it or others to present ~~((such))~~ those items.

~~((2))~~ (b) A collecting bank may send:

~~((a-any))~~ (1) An item ~~((direct))~~ directly to the payor bank;

~~((b-any))~~ (2) An item to ~~((any))~~ a non-bank payor if authorized by its transferor; and

~~((e-any))~~ (3) An item other than documentary drafts to ~~((any))~~ a non-bank payor, if authorized by Federal Reserve regulation or operating ~~((letter))~~ circular, clearing-house rule, or the like.

~~((3))~~ (c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Sec. 92. RCW 62A.4-205 and 1965 ex.s. c 157 s 4-205 are each amended to read as follows:

~~((SUPPLYING MISSING INDORSEMENT; NO NOTICE FROM PRIOR INDORSEMENT:))~~ DEPOSITARY BANK HOLDER OF UNINDORSED ITEM. If a customer delivers an item to a depositary bank for collection:

~~((1))~~ ~~A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.~~

~~(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.)~~ (a) The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of RCW 62A.3-302, it is a holder in due course; and

(b) The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

Sec. 93. RCW 62A.4-206 and 1965 ex.s. c 157 s 4-206 are each amended to read as follows:

TRANSFER BETWEEN BANKS. Any agreed method (~~which~~) that identifies the transferor bank is sufficient for the item's further transfer to another bank.

Sec. 94. RCW 62A.4-207 and 1965 ex.s. c 157 s 4-207 are each amended to read as follows:

~~TRANSFER WARRANTIES ((OF CUSTOMER AND COLLECTING BANK ON TRANSFER OR PRESENTMENT OF ITEMS; TIME FOR CLAIMS. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that~~

~~(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and~~

~~(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or~~

~~(iv) to the acceptor of an item with respect to an alteration made after the acceptance.~~

~~(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that~~

~~(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and~~

~~(b) all signatures are genuine or authorized; and  
(c) the item has not been materially altered; and  
(d) no defense of any party is good against him; and  
(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.~~  
In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

~~(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.~~

~~(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim).~~  
(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item; -
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;
- (4) The item is not subject to a defense or claim in recoupment (RCW 62A.3-305(a)) of any party that can be asserted against the warrantor; and
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in RCW 62A.3-115 and 62A.3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.



(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 95. RCW 62A.4-208 and 1965 ex.s. c 157 s 4-208 are each amended to read as follows:

~~((SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either~~

~~(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;~~

~~(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge back; or~~

~~(c) if it makes an advance on or against the item.~~

~~(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.~~

~~(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that~~

~~(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of RCW 62A.9-203); and~~

~~(b) no filing is required to perfect the security interest; and~~

~~(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds:)) PRESENTMENT WARRANTIES.~~

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 96. RCW 62A.4-209 and 1965 ex.s. c 157 s 4-209 are each amended to read as follows:

((WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course.)) **ENCODING AND RETENTION WARRANTIES.** (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Sec. 97. RCW 62A.4-210 and 1965 ex.s. c 157 s 4-210 are each amended to read as follows:

~~((PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH OR AT A BANK; LIABILITY OF SECONDARY PARTIES. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-505 by the close of the bank's next banking day after it knows of the requirement.~~

~~(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under RCW 62A.3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.)~~ SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other

than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (subsection (1) of RCW 62A.9-203);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Sec. 98. RCW 62A.4-211 and 1965 ex.s. c 157 s 4-211 are each amended to read as follows:

~~(MEDIA OF REMITTANCE; PROVISIONAL AND FINAL SETTLEMENT IN REMITTANCE CASES. (1) A collecting bank may take in settlement of an item~~

~~(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or~~

~~(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or~~

~~(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or~~

~~(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.~~

~~(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.~~

~~(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement~~

~~(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;~~

~~(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b), at the time of the receipt of such remittance check or obligation; or~~

~~(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight~~

~~deadline, at such midnight deadline.))~~ WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE. For purposes of determining its status as a holder in due course, bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course.

Sec. 99. RCW 62A.4-212 and 1965 ex.s. c 157 s 4-212 are each amended to read as follows:

~~(RIGHT OF CHARGE BACK OR REFUND. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of RCW 62A.4-211 and subsections (2) and (3) of RCW 62A.4-213).~~

~~(2) Within the time and manner prescribed by this section and RCW 62A.4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~

~~(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301)~~

~~(4) The right to charge back is not affected by~~

~~(a) prior use of the credit given for the item; or~~

~~(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.~~

~~(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.~~

~~(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge back or refund learns that it will not receive payment in ordinary course.))~~

PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT A BANK; LIABILITY OF DRAWER OR INDORSER. (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item

for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under RCW 62A.3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

Sec. 100. RCW 62A.4-213 and 1965 ex.s. c 157 s 4-213 are each amended to read as follows:

~~(FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:~~

~~(a) paid the item in cash; or~~

~~(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or~~

~~(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~

~~(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.~~

~~Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.~~

~~(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.~~

~~(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of RCW 62A.4 211, subsection (2) of RCW 62A.4 213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.~~

~~(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right~~

~~(a) in any case where the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;~~

~~(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.~~

~~(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.))~~ MEDIUM AND TIME OF SETTLEMENT BY BANK. (a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to RCW 62A.4A-406(1) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

**Sec. 101.** RCW 62A.4-214 and 1965 ex.s. c 157 s 4-214 are each amended to read as follows:

~~(INSOLVENCY AND PREFERENCE. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.~~

~~(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which~~

~~settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.~~

~~(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of RCW 62A.4-211, subsections (1)(d), (2) and (3) of RCW 62A.4-213).~~

~~(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.)~~ RIGHT OF CHARGE-BACK OR REFUND; LIABILITY OF COLLECTING BANK; RETURN OF ITEM. (a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the items, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301).

(d) The right to charge-back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.



**NEW SECTION. Sec. 102.** A new section is added to Title 62A RCW, to be codified as RCW 62A.4-215, to read as follows:

**FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL.** (a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

**NEW SECTION. Sec. 103.** A new section is added to Title 62A RCW, to be codified as RCW 62A.4-216, to read as follows:

**INSOLVENCY AND PREFERENCE.** (a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent

in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

### PART 3 COLLECTION OF ITEMS: PAYOR BANKS

**Sec. 104.** RCW 62A.4-301 and 1965 ex.s. c 157 s 4-301 are each amended to read as follows:

**DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS; TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK.**  
~~((1) Where an authorized settlement)) (a) If a payor bank settles for a demand item (other than a documentary draft) ~~((received by a payor bank))~~ presented otherwise than for immediate payment over the counter ~~((has been made))~~ before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover ~~((any payment))~~ the settlement if, before it has made final payment ~~((subsection (1) of RCW 62A.4-213))~~ and before its midnight deadline, it:~~

~~((a))~~ (1) Returns the item; or

~~((b))~~ (2) Sends written notice of dishonor or nonpayment if the item is ~~((held for protest or is otherwise))~~ unavailable for return.

~~((2))~~ (b) If a demand item is received by a payor bank for credit on its books, it may return ~~((such))~~ the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in ~~((the preceding))~~ subsection (a).

~~((3))~~ (c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

~~((4))~~ (d) An item is returned:

~~((a))~~ (1) As to an item ~~((received))~~ presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with ~~((the))~~ clearing-house rules; or

~~((b))~~ (2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to ~~((his))~~ instructions.

**Sec. 105.** RCW 62A.4-302 and 1965 ex.s. c 157 s 4-302 are each amended to read as follows:

**PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM.**  
~~((In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of RCW 62A.4-207), settlement effected or the like,)) (a) If an item is presented ~~((on))~~ to and received by a payor bank, the bank is accountable for the amount of:~~

~~((a))~~ (1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case ~~((where))~~ in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, ~~((regardless of))~~ whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

~~((b))~~ (2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (RCW 62A.4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

**Sec. 106.** RCW 62A.4-303 and 1965 ex.s. c 157 s 4-303 are each amended to read as follows:

**WHEN ITEMS SUBJECT TO NOTICE, ~~((STOP ORDER))~~ STOP-PAYMENT ORDER, LEGAL PROCESS, OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED.** ~~((+))~~ (a) Any knowledge, notice, or ~~((stop order))~~ stop-payment order received by, legal process served upon, or setoff exercised by a payor bank ~~((, whether or not effective under other rules of law))~~ comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item ~~((, comes too late to so terminate, suspend or modify such right or duty))~~ if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the ~~((bank has done any))~~ earliest of the following:

~~((a) accepted or certified))~~ (1) The bank accepts or certifies the item;

~~((b) paid))~~ (2) The bank pays the item in cash;

~~((c) settled))~~ (3) The bank settles for the item without ~~((reserving))~~ having a right to revoke the settlement ~~((and without having such right))~~ under statute, clearing-house rule, or agreement;

~~((d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has~~

~~evidenced by examination of such indicated account and by action its decision to pay the item; or~~

~~(e))~~ (4) The bank becomes accountable for the amount of the item under ~~((subsection (1)(d) of RCW 62A.4-213 and))~~ RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items~~((:)); or~~

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

~~((2))~~ (b) Subject to ((the provisions of)) subsection ((1)) (a) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order ((convenient to the bank)).

#### PART 4

#### RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

**Sec. 107.** RCW 62A.4-401 and 1965 ex.s. c 157 s 4-401 are each amended to read as follows:

**WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.** ~~((1) As against its customer;))~~ (a) A bank may charge against ((his)) the account ((any)) of a customer an item ((which)) that is ((otherwise)) properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

~~((2))~~ (b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in RCW 62A.4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in RCW 62A.4-303. A bank may not collect a fee from a customer based on the customer's giving notice to the bank of a postdating. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under RCW 62A.4-402.

(d) A bank ((which)) that in good faith makes payment to a holder may charge the indicated account of its customer according to:

~~((a))~~ (1) The original ((tenor)) terms of ((his)) the altered item; or

~~((b))~~ (2) The ~~((tenor))~~ terms of ~~((his))~~ the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

**Sec. 108.** RCW 62A.4-402 and 1965 ex.s. c 157 s 4-402 are each amended to read as follows:

**BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR; TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT.** (a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. ~~((When the dishonor occurs through mistake))~~ Liability is limited to actual damages proved ~~((If so proximately caused))~~ and ~~((proved damages))~~ may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

**Sec. 109.** RCW 62A.4-403 and 1965 ex.s. c 157 s 4-403 are each amended to read as follows:

**CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS.** ~~((+))~~ (a) A customer or any other person authorized to draw on the account if there is more than one person may ~~((by order to his bank))~~ stop payment of any item ~~((payable for his))~~ drawn on the customer's account ~~((but))~~ or close the account by an order ~~((must be))~~ to the bank describing the item or account with reasonable certainty received at ~~((such))~~ a time and in ~~((such))~~ a manner ~~((as to))~~ that affords the bank a reasonable opportunity to act on it ~~((prior to))~~ before any action by the bank with respect to the item described in RCW 62A.4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

~~((2))~~ An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing)) (b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-

payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

~~((3))~~ (c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment order or order to close the account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under RCW 62A.4-402.

**Sec. 110.** RCW 62A.4-405 and 1965 ex.s. c 157 s 4-405 are each amended to read as follows:

DEATH OR INCOMPETENCE OF CUSTOMER. ~~((4))~~ (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes ~~(such)~~ the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

~~((2))~~ (b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or ~~(prior to)~~ before that date unless ordered to stop payment by a person claiming an interest in the account.

**Sec. 111.** RCW 62A.4-406 and 1991 sp.s. c 19 s 1 are each amended to read as follows:

~~((1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his or her unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.~~

~~((2))~~ (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. Until January 1, 1998, the statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the

capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least five items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with section 118 of this act. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank ~~((establishes))~~ proves that the customer<sub>1</sub> failed with respect to an item<sub>1</sub> to comply with the duties imposed on the customer by subsection ~~((1) of this section))~~ (c) the customer is precluded from asserting against the bank:

~~((a) His or her))~~ (1) The customer's unauthorized signature or any alteration on the item<sub>1</sub> if the bank also ~~((establishes))~~ proves that it suffered a loss by reason of ~~((such))~~ the failure; and

~~((b) An))~~ (2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank ~~((after the first item and statement was available to the customer for a reasonable period and before the bank receives notification from the customer of any such unauthorized signature or alteration))~~ if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

~~((3) The preclusion under subsection (2) of this section does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s)).~~

~~(4))~~ (e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (~~(subsection ((1) of this section))~~) (a) discover and report (~~(his or her))~~ the customer's unauthorized signature or any alteration on the face or back of the item or does not within (~~(three years))~~ one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration(~~(-~~

~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim)). If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.~~

**Sec. 112.** RCW 62A.4-407 and 1965 ex.s. c 157 s 4-407 are each amended to read as follows:

**PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT.** If a payor bank has paid an item over the (~~(stop payment))~~ order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank (~~(shall be))~~ is subrogated to the rights:

~~((a))~~ (1) Of any holder in due course on the item against the drawer or maker; (~~(and))~~

~~((b))~~ (2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

~~((c))~~ (3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

#### PART 5 COLLECTION OF DOCUMENTARY DRAFTS

**Sec. 113.** RCW 62A.4-501 and 1965 ex.s. c 157 s 4-501 are each amended to read as follows:

**HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.** A bank (~~(which))~~ that takes a documentary draft for collection (~~(must))~~ shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course (~~(must))~~, shall seasonably notify its customer of (~~(such))~~ the fact even though it may have



discounted or bought the draft or extended credit available for withdrawal as of right.

**Sec. 114.** RCW 62A.4-502 and 1965 ex.s. c 157 s 4-502 are each amended to read as follows:

**PRESENTMENT OF "ON ARRIVAL" DRAFTS.** (~~(When)~~) If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of (~~(such)~~) the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

**Sec. 115.** RCW 62A.4-503 and 1965 ex.s. c 157 s 4-503 are each amended to read as follows:

**RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF NEED.** Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(~~(a)~~) (1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(~~(b)~~) (2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize (~~(his)~~) the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions. (~~(But)~~) However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for (~~(such)~~) those expenses.

**Sec. 116.** RCW 62A.4-504 and 1965 ex.s. c 157 s 4-504 are each amended to read as follows:

**PRIVILEGE OF PRESENTING BANK TO DEAL WITH GOODS; SECURITY INTEREST FOR EXPENSES.** (~~(+)~~) (a) A presenting bank (~~(which)~~) that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(~~(2)~~) (b) For its reasonable expenses incurred by action under subsection (~~(+)~~) (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

**NEW SECTION. Sec. 117.** For the purposes of maintaining the uniformity of the Uniform Commercial Code (Title 62A RCW), the code reviser may reuse the codification numbers of those sections repealed in section 76 of this act.

**NEW SECTION. Sec. 118.** A new section is added to chapter 30.22 RCW to read as follows:

A financial institution may charge a customer for furnishing items or copies of items as defined in RCW 62A.4-104, in excess of the number of free items or copies of items provided for in 62A.4-406(b), fifty cents per copy furnished plus fees for retrieval at a rate not to exceed the rate assessed when complying with summons issued by the Internal Revenue Service.

**NEW SECTION. Sec. 119.** No provision in this act changes or modifies existing common law or other law of Washington state concerning the recovery of attorneys' fees.

**NEW SECTION. Sec. 120.** This act shall take effect July 1, 1994.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 230

[House Bill 1015]

### UNIFORM COMMERCIAL CODE—LEASES

Effective Date: 7/1/94

AN ACT Relating to the Uniform Commercial Code; amending RCW 62A.1-105, 62A.1-201, and 62A.9-113; adding a new Article to Title 62A RCW; and providing an effective date.

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

#### PART 1

#### GENERAL PROVISIONS

**NEW SECTION. Sec. 2A-101. SHORT TITLE.** This Article shall be known and may be cited as the Uniform Commercial Code - Leases.

**NEW SECTION. Sec. 2A-102. SCOPE.** This Article applies to any transaction, regardless of form, that creates a lease.

**NEW SECTION. Sec. 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.** (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes

receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310(1).
"Construction mortgage."	RCW 62A.2A-309(1)(d).
"Encumbrance."	RCW 62A.2A-309(1)(e).
"Fixtures."	RCW 62A.2A-309(1)(a).
"Fixture filing."	RCW 62A.2A-309(1)(b).
"Purchase money lease."	RCW 62A.2A-309(1)(c).

(3) The following definitions in other Articles apply to this Article:

"Account."	RCW 62A.9-106.
"Between merchants."	RCW 62A.2-104(3).
"Buyer."	RCW 62A.2-103(1)(a).
"Chattel paper."	RCW 62A.9-105(1)(b).
"Consumer goods."	RCW 62A.9-109(1).
"Document."	RCW 62A.9-105(1)(f).
"Entrusting."	RCW 62A.2-403(3).
"General intangibles."	RCW 62A.9-106.
"Good faith."	RCW 62A.2-103(1)(b).
"Instrument."	RCW 62A.9-105(1)(i).
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9-105(1)(j).
"Pursuant to commitment."	RCW 62A.9-105(1)(k).
"Receipt."	RCW 62A.2-103(1)(c).
"Sale."	RCW 62A.2-106(1).
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103(1)(d).

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article.

**NEW SECTION. Sec. 2A-104. LEASES SUBJECT TO OTHER LAW.**

- (1) A lease, although subject to this Article, is also subject to any applicable:
- (a) Certificate of title statute of this state (chapters 46.12 and 88.02 RCW);
  - (b) Certificate of title statute of another jurisdiction (RCW 62A.2A-105); or
  - (c) Consumer protection statute of this state.
- (2) In case of conflict between this Article, other than RCW 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to in subsection (1) of this section, the statute or decision controls.
- (3) Failure to comply with an applicable law has only the effect specified therein.

**NEW SECTION. Sec. 2A-105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.** Subject to the provisions of RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

**NEW SECTION. Sec. 2A-106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM.** (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lessee executes the lease, the choice is not enforceable.

(2) If the judicial forum or the forum for dispute resolution chosen by the parties to a consumer lease is a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lease is executed by the lessee, the choice is not enforceable.

**NEW SECTION. Sec. 2A-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT.** Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

**NEW SECTION. Sec. 2A-108. UNCONSCIONABILITY.** (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the

lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If a party claims that, or it appears to the court that, the lease contract or a clause within the contract may be unconscionable, the court shall allow a reasonable opportunity to present evidence as to the lease or clause's commercial setting, purpose, and effect to aid the court in making the determination.

## PART 2

### FORMATION AND CONSTRUCTION OF LEASE CONTRACT

**NEW SECTION. Sec. 2A-201. STATUTE OF FRAUDS.** (1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term.

**NEW SECTION. Sec. 2A-202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**NEW SECTION. Sec. 2A-203. SEALS INOPERATIVE.** The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**NEW SECTION. Sec. 2A-204. FORMATION IN GENERAL.** (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

**NEW SECTION. Sec. 2A-205. FIRM OFFERS.** An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**NEW SECTION. Sec. 2A-206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT.** (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.



**NEW SECTION. Sec. 2A-207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.** (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of RCW 62A.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

**NEW SECTION. Sec. 2A-208. MODIFICATION, RESCISSION, AND WAIVER.** (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**NEW SECTION. Sec. 2A-209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT.** (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

**NEW SECTION. Sec. 2A-210. EXPRESS WARRANTIES.** (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warranty" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

**NEW SECTION. Sec. 2A-211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT.** (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

**NEW SECTION. Sec. 2A-212. IMPLIED WARRANTY OF MERCHANTABILITY.** (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the description in the lease agreement;

(b) In the case of fungible goods, are of fair average quality within the description;

(c) Are fit for the ordinary purposes for which goods of that type are used;

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) Are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

**NEW SECTION. Sec. 2A-213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.** Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

**NEW SECTION. Sec. 2A-214. EXCLUSION OR MODIFICATION OF WARRANTIES.** (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of RCW 62A.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of

warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (RCW 62A.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

**NEW SECTION. Sec. 2A-215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.** Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**NEW SECTION. Sec. 2A-216. THIRD PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.** A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

**NEW SECTION. Sec. 2A-217. IDENTIFICATION.** Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals.

**NEW SECTION. Sec. 2A-218. INSURANCE AND PROCEEDS.** (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

**NEW SECTION. Sec. 2A-219. RISK OF LOSS.** (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (RCW 62A.2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2) (a) or (b) of this section, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

**NEW SECTION. Sec. 2A-220. EFFECT OF DEFAULT ON RISK OF LOSS.** (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

**NEW SECTION. Sec. 2A-221. CASUALTY TO IDENTIFIED GOODS.** If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier, before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or RCW 62A.2A-219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

### PART 3

#### EFFECT OF LEASE CONTRACT

**NEW SECTION. Sec. 2A-301. ENFORCEABILITY OF LEASE CONTRACT.** Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

**NEW SECTION. Sec. 2A-302. TITLE TO AND POSSESSION OF GOODS.** Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

**NEW SECTION. Sec. 2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.**

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of RCW 62A.9-102(1)(b).

(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (a) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.

(5) Subject to subsections (3) and (4) of this section:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (5)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract,

(A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

**NEW SECTION. Sec. 2A-304. SUBSEQUENT LEASE OF GOODS BY LESSOR.** (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;  
(b) The delivery was in exchange for a check which is later dishonored;  
(c) It was agreed that the transaction was to be a "cash sale"; or  
(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.



**NEW SECTION. Sec. 2A-305. SALE OR SUBLEASE OF GOODS BY LESSEE.** (1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;  
 (b) The delivery was in exchange for a check which is later dishonored; or  
 (c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**NEW SECTION. Sec. 2A-306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.** If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

**NEW SECTION. Sec. 2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.** (1) Except as otherwise provided in RCW 62A.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) of this section and in RCW 62A.2A-306 and 62A.2A-308, a creditor of a lessor takes subject to the lease contract unless:

(a) The creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) The creditor holds a security interest in the goods which was perfected (RCW 62A.9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (RCW 62A.9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period.

**NEW SECTION. Sec. 2A-308. SPECIAL RIGHTS OF CREDITORS.** (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

**NEW SECTION. Sec. 2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.** (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of RCW 62A.9-402(5);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the

completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (b) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions, Article 62A.9 RCW.

**NEW SECTION. Sec. 2A-310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS.** (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a

lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

**NEW SECTION. Sec. 2A-311. PRIORITY SUBJECT TO SUBORDINATION.** Nothing in this Article prevents subordination by agreement by any person entitled to priority.

#### PART 4

#### PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSED

**NEW SECTION. Sec. 2A-401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.** (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

**NEW SECTION. Sec. 2A-402. ANTICIPATORY REPUDIATION.** If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to RCW 62A.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (RCW 62A.2A-524).

**NEW SECTION. Sec. 2A-403. RETRACTION OF ANTICIPATORY REPUDIATION.** (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under RCW 62A.2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

**NEW SECTION. Sec. 2A-404. SUBSTITUTED PERFORMANCE.** (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

**NEW SECTION. Sec. 2A-405. EXCUSED PERFORMANCE.** Subject to RCW 62A.2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in subsection (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (b) of this section, of the estimated quota thus made available for the lessee.

**NEW SECTION. Sec. 2A-406. PROCEDURE ON EXCUSED PERFORMANCE.** (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under RCW 62A.2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510):

(a) Terminate the lease contract (RCW 62A.2A-505(2)); or

(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under RCW 62A.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

**NEW SECTION. Sec. 2A-407. IRREVOCABLE PROMISES: FINANCE LEASES.** (1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

PART 5  
DEFAULT

A. IN GENERAL

**NEW SECTION. Sec. 2A-501. DEFAULT: PROCEDURE.** (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in RCW 62A.1-106(1) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part 5 does not apply.

**NEW SECTION. Sec. 2A-502. NOTICE AFTER DEFAULT.** Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

**NEW SECTION. Sec. 2A-503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.** (1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or



provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under RCW 62A.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

**NEW SECTION. Sec. 2A-504. LIQUIDATION OF DAMAGES.** (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (RCW 62A.2A-525 or 62A.2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or

(b) In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section; and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

**NEW SECTION. Sec. 2A-505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.** (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party

also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

**NEW SECTION.** **Sec. 2A-506. STATUTE OF LIMITATIONS.** (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

**NEW SECTION.** **Sec. 2A-507. PROOF OF MARKET RENT: TIME AND PLACE.** (1) Damages based on market rent (RCW 62A.2A-519 or 62A.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in RCW 62A.2A-519 and 62A.2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described

or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

## B. DEFAULT BY LESSOR

**NEW SECTION. Sec. 2A-508. LESSEE'S REMEDIES.** (1) If a lessor fails to deliver the goods in conformity to the lease contract (RCW 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably revokes acceptance of the goods (RCW 62A.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessor is in default under the lease contract and the lessee may:

- (a) Cancel the lease contract (RCW 62A.2A-505(1));
- (b) Recover so much of the rent and security as has been paid and which is just under the circumstances;
- (c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (RCW 62A.2A-518 and 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and 62A.2A-520);
- (d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

- (a) If the goods have been identified, recover them (RCW 62A.2A-522); or
- (b) In a proper case, obtain specific performance or replevy the goods (RCW 62A.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in RCW 62A.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (RCW 62A.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their

inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to RCW 62A.2A-527(5).

(6) Subject to the provisions of RCW 62A.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

**NEW SECTION.** Sec. 2A-509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION. (1) Subject to the provisions of RCW 62A.2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

**NEW SECTION.** Sec. 2A-510. INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

**NEW SECTION.** Sec. 2A-511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (1) Subject to any security interest of a lessee (RCW 62A.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee, under subsection (1) of this section, or any other lessee (RCW 62A.2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include

no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or RCW 62A.2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or RCW 62A.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

**NEW SECTION. Sec. 2A-512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.** (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (RCW 62A.2A-511) and subject to any security interest of a lessee (RCW 62A.2A-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in RCW 62A.2A-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion.

**NEW SECTION. Sec. 2A-513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.** (1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.

**NEW SECTION. Sec. 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

**NEW SECTION. Sec. 2A-515. ACCEPTANCE OF GOODS.** (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (RCW 62A.2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**NEW SECTION. Sec. 2A-516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.** (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (RCW 62A.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound

in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after reasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (RCW 62A.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (RCW 62A.2A-211).

**NEW SECTION. Sec. 2A-517. REVOCATION OF ACCEPTANCE OF GOODS.** (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

**NEW SECTION. Sec. 2A-518. COVER; SUBSTITUTE GOODS.** (1) After a default by a lessor under the lease contract of the type described in (RCW 62A.2A-508(1)), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially

reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs.

**NEW SECTION. Sec. 2A-519. LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**NEW SECTION. Sec. 2A-520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.** (1) Incidental damages resulting from a



lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

**NEW SECTION. Sec. 2A-521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.** (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

**NEW SECTION. Sec. 2A-522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY.** (1) Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (RCW 62A.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

### C. DEFAULT BY LESSEE

**NEW SECTION. Sec. 2A-523. LESSOR'S REMEDIES.** (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (RCW 62A.2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (RCW 62A.2A-525);

(d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);

(e) Dispose of the goods and recover damages (RCW 62A.2A-527), or retain the goods and recover damages (RCW 62A.2A-528), or in a proper case recover rent (RCW 62A.2A-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section.

**NEW SECTION. Sec. 2A-524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.** (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (RCW 62A.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

**NEW SECTION. Sec. 2A-525. LESSOR'S RIGHT TO POSSESSION OF GOODS.** (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease

contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (RCW 62A.2A-527).

(3) The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

**NEW SECTION. Sec. 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.** (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

- (a) Receipt of the goods by the lessee;
- (b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**NEW SECTION. Sec. 2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.** (1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease

agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(5)).

**NEW SECTION. Sec. 2A-528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under subsection (1)(i) of this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under RCW 62A.2A-530, due

allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**NEW SECTION. Sec. 2A-529. LESSOR'S ACTION FOR THE RENT.**

(1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(?) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under RCW 62A.2A-527 and 62A.2A-528.

**NEW SECTION. Sec. 2A-530. LESSOR'S INCIDENTAL DAMAGES.** Incidental damages to an aggrieved lessor include any commercially reasonable

charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

**NEW SECTION. Sec. 2A-531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.** (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

(i) Has a security interest in the goods;  
 (ii) Has an insurable interest in the goods; or  
 (iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

**NEW SECTION. Sec. 2A-532. LESSOR'S RIGHTS TO RESIDUAL INTEREST.** In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

## PART 6 AMENDATORY SECTIONS

**Sec. 2A-601.** RCW 62A.1-105 and 1981 c 41 s 1 are each amended to read as follows:

**TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW.** (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Bulk transfers subject to the Article on Bulk Transfers. RCW 62A.6-102.

Applicability of the Article on Investment Securities. RCW 62A.8-106.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103.

**Sec. 2A-602.** RCW 62A.1-201 and 1992 c 134 s 14 are each amended to read as follows:

Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to ~~((an instrument, certificated security, or document of title means the person in possession if (a) in the case of an instrument, it is payable to bearer or to the order of the person in possession, (b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form, or (c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession))~~ a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person,



if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government (~~(or intergovernmental organization)~~) and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know

of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a ~~((lease or))~~ consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment ~~((is))~~ in any event is subject to the provisions on consignment sales (RCW 62A.2-326). ~~((Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.))~~

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use

of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

**Sec. 2A-603.** RCW 62A.9-113 and 1965 ex.s. c 157 s 9-113 are each amended to read as follows:

**SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES.** A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this Article except

that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2) in the case of a security interest arising solely under such Article or (ii) by the Article on Leases (Article 2A) in the case of a security interest arising solely under such Article.

NEW SECTION. **Sec. 2A-604.** Sections 2A-101 through 2A-532 of this act shall constitute a new Article in Title 62A RCW.

NEW SECTION. **Sec. 2A-605.** This act shall take effect July 1, 1994.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 231

[House Bill 1024]

### FIRE PROTECTION DISTRICT BONDS—MATURITY DATE

**Effective Date:** 7/25/93

AN ACT Relating to general obligation bonds issued by a fire protection district; and amending RCW 52.16.061.

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

**Sec. 1.** RCW 52.16.061 and 1984 c 186 s 39 are each amended to read as follows:

The board of fire commissioners of the district shall have authority to contract indebtedness and to refund same for any general district purpose, including expenses of maintenance, operation and administration, and the acquisition of firefighting facilities, and evidence the same by the issuance and sale of general obligation bonds of the district payable at such time or times not longer than ~~((six\*))~~ twenty years from the issuing date of the bonds. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such bonds shall not exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of the taxable property within the fire protection district, as the term "value of the taxable property" is defined in RCW 39.36.015.

Passed the House April 19, 1993.  
Passed the Senate April 6, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 232**

[House Bill 1025]

**STATUTE OF LIMITATIONS—IMPRISONMENT NOT TO TOLL**

**Effective Date: 7/25/93**

AN ACT Relating to the limitation of actions brought by prisoners; and amending RCW 4.16.190.

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

**Sec. 1.** RCW 4.16.190 and 1977 ex.s. c 80 s 2 are each amended to read as follows:

If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge(~~(or in execution under the sentence of a court for a term less than his natural life))~~) prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

Passed the House April 19, 1993.  
Passed the Senate April 8, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 233**

[Substitute House Bill 1026]

**PUBLIC DEFENDER SERVICES—EXEMPTION FROM BIDDING REQUIREMENTS**

**Effective Date: 7/25/93**

AN ACT Relating to counties contracting for public defender services; and amending RCW 36.32.245.

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

**Sec. 1.** RCW 36.32.245 and 1991 c 363 s 62 are each amended to read as follows:

(1) No contract for the purchase of materials, equipment, supplies, or services may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the

county. Bid specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the official newspaper of the county stating the time and place where bids will be opened, the time after which bids will not be received, the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least ten days prior to the last date upon which bids will be received.

(2) The bids shall be in writing and filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Immediately after the award is made, the bid quotations shall be recorded and open to public inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between two thousand five hundred and twenty-five thousand dollars, the county legislative authority must use the uniform process to award contracts as provided in RCW 39.04.190.

(4) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW; or contracts and purchases for the printing of election ballots, voting machine labels, and all other election material containing the names of candidates and ballot titles.

(5) Nothing in this section shall prohibit the legislative authority of any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(6) This section does not apply to contracting for public defender services by a county.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 234

[House Bill 1058]

### CHAPLAINS—EMPLOYMENT BY PUBLIC HOSPITAL DISTRICT

**Effective Date:** 1/1/94 - Pending approval of HJR 4200 by voters at the 1993 general election

AN ACT Relating to public hospital districts; adding a new section to chapter 70.44 RCW; and providing a contingent effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.44 RCW to read as follows:

Public hospital districts may employ chaplains for their hospitals, health care facilities, and hospice programs.

**NEW SECTION. Sec. 2.** This act shall take effect on January 1, 1994, if the proposed amendment to Article I, section 11 of the state Constitution authorizing the legislature to permit public hospital districts to employ chaplains is validly submitted to and is approved and ratified by the voters at the next general election held. If the proposed amendment is not so approved and ratified, this act is void in its entirety.

Passed the House April 21, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 235

[Substitute House Bill 1061]

### IRRIGATION DISTRICTS—MERGER OF MINOR DISTRICT INTO MAJOR DISTRICT

Effective Date: 7/25/93

AN ACT Relating to irrigation districts; amending RCW 87.03.530; adding new sections to chapter 87.03 RCW; adding a new section to chapter 87.04 RCW; adding a new section to chapter 36.93 RCW; and creating a new section.

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

**Sec. 1.** RCW 87.03.530 and 1919 c 180 s 18 are each amended to read as follows:

(1) Two or more irrigation districts may be consolidated into one district as provided in RCW 87.03.535 through 87.03.551 and may include in such district other lands susceptible of irrigation in the manner provided in this act, and upon the organization of such consolidated district it shall be an organized irrigation district subject to ((a)) the provisions of this chapter.

(2) A smaller irrigation district may be merged into a larger irrigation district as provided in sections 2 through 7 of this act if the assessed acreage in the smaller district constitutes not more than thirty percent of the combined assessed acreage of the two districts. In such a proceeding, the smaller district is referred to as the "minor" irrigation district and the larger district is referred to as the "major" irrigation district. The district resulting from such a merger shall be an organized district subject to the provisions of this chapter.

**NEW SECTION. Sec. 2.** This section and sections 3 through 7 of this act provide the procedures by which a minor irrigation district may be merged into a major irrigation district as authorized by RCW 87.03.530(2).

To institute proceedings for such a merger, the board of directors of the minor district shall adopt a resolution requesting the board of directors of the major district to consider the merger.



The board of directors of the major irrigation district shall consider the request at the next regularly scheduled meeting of the board of directors of the major district following its receipt of the minor district's request or at a special meeting called for the purpose of considering the request. If the board of the major district denies the request of the minor district, no further action on the request shall be taken.

If the board of the major district does not deny the request, it shall conduct a public hearing on the request and shall give notice regarding the hearing. The notice shall describe the proposed merger and shall be published once a week for two consecutive weeks preceding the date of the hearing and the last publication shall be not more than seven days before the date of the hearing. The notice shall contain a statement that unless the holders of title or evidence of title to at least twenty percent of the assessed lands within the major district file a protest opposing the merger with the board of the major district at or before the hearing, the board is free to approve the request for the merger without an election being conducted in the major district on the request. If the board of the major district is considering requests from more than one minor district, the hearing shall be conducted on all such requests.

**NEW SECTION.** Sec. 3. (1) If, following the public hearing conducted under section 2 of this act, the board of directors of the major irrigation district denies the request for a merger, no further action shall be taken on the request. If, following the public hearing, the board adopts a resolution approving the merger, the merger is approved by the major irrigation district and no election shall be held in the major district to approve the merger. However, if the holders of title or evidence of title to at least twenty percent of the assessed lands within the major district file a protest opposing the merger with the board of the major district at or before the public hearing, the board shall call a special election and submit to the voters of the major district the question of whether the merger should or should not be approved. Votes shall be cast as "Merger - Yes" or "Merger - No." If such a special election must be conducted and a majority of all votes cast in the district approve the merger, the merger is approved by the major district. Such an approval is effective on the date the returns of the election are canvassed under RCW 87.03.105.

(2) The board of directors of the minor irrigation district shall, within thirty days of the date the merger is approved by the major district or of the date the board of the major district issues its call for a special election on the merger, call a special election within the minor district and submit to the voters of the minor district the question of whether the merger should or should not be approved. If special elections must be conducted in both districts, both elections shall be conducted on the date set by the board of the major district. If only the minor district must conduct such a special election, the election shall be held not later than sixty days after the date the merger has been approved by the board of the major district. Votes on the question shall be cast as "Merger - Yes" or "Merger - No." If a majority of all votes cast in the district are cast for

"Merger - Yes," the merger is approved by the minor irrigation district. Such an approval is effective on the date the returns of the election are canvassed under RCW 87.03.105.

(3) Notice of election in each district on the merger question shall conform to the requirements of notices for elections in the major district. Elections and voting in each district shall be consistent with RCW 87.03.045, 87.03.051, and 87.03.071. If the majority of all votes cast in a special election in either the major or a minor district are cast for "Merger - No," the merger is not approved.

(4) If the merger is approved by the major irrigation district and by the minor irrigation district as provided by this section, the minor irrigation district is merged into the major irrigation district. If two or more minor districts are merging with a major district in one process as authorized by section 7 of this act and if the merger is approved by the major irrigation district and by at least one of the minor irrigation districts as provided by this section, each minor irrigation district so approving is merged into the major irrigation district. The effective date of the merger is the date by which approval of the merger has been secured in both districts or, under section 7 of this act, in the major and minor district or districts. The board or boards of county commissioners of the county or counties containing territory of the merged districts and the director of the department of ecology shall be notified that the districts have merged.

NEW SECTION. Sec. 4. The members of the board of directors of the major irrigation district shall hold office as directors of the district formed by the merger until the end of their terms of office. If the major district is divided into director divisions, the board of the major district shall propose a plan for redividing the district into divisions that reflect the boundaries of the district created by the merger and this requirement regarding the directors of the major district. If the major district is considering a merger with more than one minor district, the board shall submit plans for the various possible mergers. The proposal or proposals shall be filed with the county legislative authority before the merger is approved in the major district or the minor district or districts. Following the merger, the county legislative authority shall approve the plan submitted for the districts that actually merged.

On the effective date of the merger, the directors of the minor district shall transfer the property and other assets of the district as required in section 6 of this act. Following the transfer of the property and other assets, the minor irrigation district and the office of director of the minor district shall cease to exist.

The board of directors of the district formed by the merger shall have all the powers and obligations of the boards of the major and minor districts that were merged to form the district including, but not limited to, such boards' powers and obligations for any local improvement districts created in the minor or major district under this chapter.

**NEW SECTION. Sec. 5.** (1) The merger of irrigation districts shall not affect or impair any bonds or obligations of the merged districts and the holders of the bonds of any merged district shall be entitled to all remedies for their enforcement as if the district had not been merged. All obligations incurred by the district prior to its merger shall be a prior lien to any obligation that may be incurred against the district created by the merger. However, the board of directors of the merged district may, when authorized under RCW 87.03.200 and with the consent of the bondholders, exchange the bonds of the district created by the merger for the bonds of the districts that merged. If the major or minor district entered, prior to the merger, into a contract with the United States under this chapter and the board of directors of the district created by the merger proposes that the merged district enter into a contract with the United States, the board may do so when authorized under RCW 87.03.200 and may, with the consent of the United States, cancel any contract previously entered into between the major or minor district and the United States.

(2) The district created by the merger shall be entitled to all remedies for the enforcement of the irrigation district assessments and other obligations of lands to the districts that merged as if the districts had not merged. All obligations incurred for irrigation district or local improvement district purposes by the lands within the major or minor district prior to its merger shall be a prior lien to any obligation that may be incurred against those lands after the merger.

(3) Until premerger assessments have been collected and all of the premerger indebtedness of the major and minor districts that merged have been paid, separate funds shall be maintained for each district as were maintained in each prior to the merger. The board of directors of the irrigation district created by the merger may establish a local improvement district for each district included in the merger to carry out the obligations of each such district. This board shall have all the powers possessed by the boards of directors of the districts included in the merger to carry out all contracts of the included districts and to levy, assess, and cause to be collected any and all assessments or charges against the lands of each of the included districts. A petition shall not be required for the formation of a local improvement district created for this purpose.

**NEW SECTION. Sec. 6.** Prior to or on the effective date of a merger of a minor irrigation district and a major irrigation district, the board of directors of the minor district shall cause to be prepared a statement of all property and other assets of the minor district. The statement shall be filed with the board of directors of the district created by the merger and on the effective date of the merger. The statement shall also be filed with the county auditor of the county containing the majority of the territory of the district after the merger. Upon the filing with the board, the property and other assets of the minor district shall, subject to the rights of the holders of bonds or other obligations of the minor district, become the property and other assets of the district created by the merger.

**NEW SECTION.** Sec. 7. More than two irrigation districts may merge under RCW 87.03.530(2) and sections 2 through 6 of this act in one merger process. However, only one of the districts may be a "major" irrigation district and the assessed acreage in all of the other districts merging in the process, when taken collectively, shall not constitute more than thirty percent of the combined assessed acreage of all of the merging districts. In such a case, each of these other, nonmajor districts is considered to be a "minor" irrigation district under RCW 87.03.530(2) and sections 2 through 6 of this act.

**NEW SECTION.** Sec. 8. Nothing in RCW 87.03.530(2) and sections 2 through 7 of this act shall authorize the impairment or operate to impair any existing water rights.

**NEW SECTION.** Sec. 9. A new section is added to chapter 87.04 RCW to read as follows:

RCW 87.04.030 through 87.04.055 do not apply to redividing a district immediately following a merger as provided in section 4 of this act.

**NEW SECTION.** Sec. 10. A new section is added to chapter 36.93 RCW to read as follows:

This chapter does not apply to the merger of irrigation districts authorized under RCW 87.03.530(2) and sections 2 through 7 of this act.

**NEW SECTION.** Sec. 11. Sections 2 through 7 of this act are each added to chapter 87.03 RCW.

Passed the House April 19, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 236

[Substitute House Bill 1077]

### NONPROBATE ASSETS—REVOCATION OF PROVISIONS RELATING TO DECEDENT'S FORMER SPOUSE

Effective Date: 7/25/93

AN ACT Relating to the revocation of nonprobate asset arrangements for divorce or invalidation of marriage; amending RCW 41.26.510, 41.32.805, and 41.40.700; and adding a new chapter to Title 11 RCW.

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

**NEW SECTION.** Sec. 1. (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the

decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the

payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

**NEW SECTION.** Sec. 2. Section 1 of this act shall constitute a new chapter in Title 11 RCW.

**Sec. 3.** RCW 41.26.510 and 1991 c 365 s 31 are each amended to read as follows:

(1) Except as provided in section 1 of this act, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to such person or persons having an insurable interest in such member's life as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee

upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.26.430(1), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.26.460 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.26.430(2); if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, having an insurable interest in the member's life, as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

**Sec. 4.** RCW 41.32.805 and 1991 c 365 s 30 are each amended to read as follows:

(1) Except as provided in section 1 of this act, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670,



at the time of such member's death shall be paid to such person or persons having an insurable interest in such member's life as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.32.765(1), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.32.785 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765(2); if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, having an insurable interest in the member's life, as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

Sec. 5. RCW 41.40.700 and 1991 c 365 s 28 are each amended to read as follows:

(1) Except as provided in section 1 of this act, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to such person or persons having an insurable interest in such member's life as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.40.630(1), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.630(2); if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an

obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, having an insurable interest in the member's life, as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

Passed the House April 19, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 237

[Engrossed House Bill 1115]

### CHILD ABUSE—LAW ENFORCEMENT ACCESS TO RELEVANT RECORDS

Effective Date: 7/25/93

AN ACT Relating to abuse of children; and amending RCW 26.44.030.

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

**Sec. 1.** RCW 26.44.030 and 1991 c 111 s 1 are each amended to read as follows:

(1) When any practitioner, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040. The report shall be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be

seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report ~~((of incidents, conditions, or circumstances))~~ of child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department ~~((of social and health services))~~ shall ~~((, within funds appropriated for this purpose,))~~ use a risk assessment ~~((tool))~~ process when investigating child abuse and neglect referrals. ~~((The tool shall be used, on a pilot basis, in three local office service areas.))~~ The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the ~~((ways and means))~~ appropriate committees of the senate and house of representatives on the ~~((use))~~ effectiveness of the ~~((tool by December 1, 1989. The report shall include~~

~~recommendations on the continued use and possible expanded use of the tool))~~  
risk assessment process.

(14) Upon receipt of ~~((such))~~ a report of abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

Passed the House April 19, 1993.  
Passed the Senate April 6, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 238**

[Engrossed Substitute House Bill 1127]

**VEHICLE EXCISE TAXES—EVASION THROUGH REGISTRATION  
IN ANOTHER STATE OR COUNTRY**

**Effective Date:** 7/25/93

AN ACT Relating to the evasion of a tax or license fee when licensing a vehicle; amending RCW 46.16.010, 47.68.240, 88.02.118, 82.48.020, 82.49.010, and 82.50.400; adding a new section to chapter 47.68 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 46.16.010 and 1991 c 163 s 1 are each amended to read as follows:

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

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

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

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

(3) These provisions shall not apply to farm vehicle[s] as defined in RCW 46.04.181 if operated within a radius of fifteen miles of the farm where

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

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

Exclusions:

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

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and

shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(4) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

NEW SECTION. Sec. 2. A new section is added to chapter 47.68 RCW to read as follows:

A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country evading the Washington aircraft excise tax is guilty of a gross misdemeanor.

Sec. 3. RCW 47.68.240 and 1987 c 202 s 216 are each amended to read as follows:

Any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, shall be guilty of a misdemeanor and shall be punished ~~((by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both such fine and imprisonment: PROVIDED:))~~ as provided under chapter 9A.20 RCW, except that any person violating any of the provisions of RCW 47.68.220 ((or)), 47.68.230, or section 2 of this act shall be guilty of a gross misdemeanor which shall be punished ((by a fine of not more than one thousand dollars or by imprisonment for not more than one year or by both in any proceeding brought in superior court and by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both in any proceedings brought in district court)) as provided under chapter 9A.20 RCW. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

Sec. 4. RCW 88.02.118 and 1987 c 149 s 7 are each amended to read as follows:

It is a gross misdemeanor punishable as provided under chapter 9A.20 RCW for any person owning a vessel subject to taxation under chapter 82.49 RCW to register a vessel in another state to avoid Washington state vessel excise tax



required under chapter 82.49 RCW or to obtain a vessel dealer's registration for the purpose of evading excise tax on vessels under chapter 82.49 RCW.

**Sec. 5.** RCW 82.48.020 and 1992 c 154 s 1 are each amended to read as follows:

(1) An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel shall constitute the necessary evidence of aircraft use or intended use. The tax shall be collected annually or under a staggered collection schedule as required by the secretary by rule. No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such aircraft has already been paid for the year in which transfer of ownership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.

(2) Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the Washington aircraft excise tax are liable for such unpaid excise tax. A violation of this subsection is a gross misdemeanor. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) Except as provided under subsections (1) and (2) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW.

**Sec. 6.** RCW 82.49.010 and 1992 c 154 s 3 are each amended to read as follows:

(1) An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater. Violation of this subsection is a misdemeanor.

(2) Persons who are required under chapter 88.02 RCW to register a vessel in this state and who register the vessel in another state or foreign country and avoid the Washington watercraft excise tax are guilty of a gross misdemeanor and are liable for such unpaid excise tax. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.050. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately

preceding year. The excise tax on vessels required to be registered in this state on June 30, 1983, shall be paid by June 30, 1983.

**Sec. 7.** RCW 82.50.400 and 1992 c 154 s 5 are each amended to read as follows:

(1) An annual excise tax is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. The excise tax hereby imposed shall be due and payable to the department of licensing or its agents at the time of registration of a travel trailer or camper. Whenever an application is made to the department of licensing or its agents for a license for a travel trailer or camper there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter, and no dealer's license or license plates, and no license or license plates for a travel trailer or camper may be issued unless such tax is paid in full. No additional tax shall be imposed under this chapter upon any travel trailer or camper upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such travel trailer or camper has already been paid for the registration year or fractional part thereof in which such transfer occurs. Violation of this subsection is a misdemeanor.

(2) Persons who are required to license travel trailers or campers under chapter 46.16 RCW and who license travel trailers or campers in another state or foreign country to avoid the Washington travel trailer or camper tax are guilty of a gross misdemeanor and are liable for such unpaid excise tax. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 239

[Substitute House Bill 1128]

### BLOOD AND BREATH ALCOHOL CONTENT TESTING PROGRAM—FEES TO FUND

**Effective Date:** 7/1/93

AN ACT Relating to fees to fund blood and breath alcohol content testing; amending RCW 46.61.515; creating a new section; prescribing penalties; providing an effective date; providing an expiration date; and declaring an emergency.

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

**Sec. 1.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read as follows:

(1) Every person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished by imprisonment for not less than twenty-four consecutive hours nor more than one year, and by a fine of not less than two

hundred fifty dollars and not more than one thousand dollars. Unless the judge finds the person to be indigent, two hundred fifty dollars of the fine shall not be suspended or deferred. Twenty-four consecutive hours of the jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. The court may impose conditions of probation that may include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The convicted person shall, in addition, be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services, as determined by the court. A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the convicted person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services. Standards for approval for alcohol treatment programs shall be prescribed by rule under the administrative procedure act, chapter 34.05 RCW. The courts shall periodically review the costs of alcohol information schools and treatment programs within their jurisdictions.

(2) On a second or subsequent conviction for driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs within a five-year period a person shall be punished by imprisonment for not less than seven days nor more than one year and by a fine of not less than five hundred dollars and not more than two thousand dollars. District courts and courts organized under chapter 35.20 RCW are authorized to impose such fine. Unless the judge finds the person to be indigent, five hundred dollars of the fine shall not be suspended or deferred. The jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. If, at the time of a second or subsequent conviction, the driver is without a license or permit because of a previous suspension or revocation, the minimum mandatory sentence shall be ninety days in jail and a two hundred dollar fine. The penalty so imposed shall not be suspended or deferred. The person shall, in addition, be required to complete a diagnostic evaluation by an alcoholism agency approved by the department of social and

health services or a qualified probation department approved by the department of social and health services. The report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem requiring treatment, the person shall complete treatment at an approved alcoholism treatment ((facility)) program or approved drug treatment center.

In addition to any nonsuspendable and nondeferable jail sentence required by this subsection, the court shall sentence a person to a term of imprisonment not exceeding one hundred eighty days and shall suspend but shall not defer the sentence for a period not exceeding two years. The suspension of the sentence may be conditioned upon nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of suspension during the suspension period.

(3) The license or permit to drive or any nonresident privilege of any person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs shall:

(a) On the first conviction under either offense, be suspended by the department until the person reaches age nineteen or for ninety days, whichever is longer. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified;

(b) On a second conviction under either offense within a five-year period, be revoked by the department for one year. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified;

(c) On a third or subsequent conviction of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, vehicular homicide, or vehicular assault, or any combination thereof within a five-year period, be revoked by the department for two years.

(4) In any case provided for in this section, where a driver's license is to be revoked or suspended, the revocation or suspension shall be stayed and shall not take effect until after the determination of any appeal from the conviction which may lawfully be taken, but in case the conviction is sustained on appeal the revocation or suspension takes effect as of the date that the conviction becomes effective for other purposes.

(5)(a) In addition to penalties set forth in this section, a one hundred twenty-five dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for

the purpose of funding the Washington state toxicology laboratory and the Washington state patrol breath test program.

(b) Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the one hundred twenty-five dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

(6) The fee assessed under subsection (5) of this section shall be collected by the clerk of the court and distributed as follows:

(a) Forty percent shall be subject to distribution under RCW 3.62.020, 3.62.040, or 10.82.040.

(b) If the case involves a blood test by the state toxicology laboratory, the remainder of the fee shall be forwarded to the state treasurer for deposit in the death investigations account to be used solely for funding the state toxicology laboratory blood testing program.

(c) Otherwise, the remainder of the fee shall be forwarded to the state treasurer for deposit in the state patrol highway account to be used solely for funding the Washington state patrol breath test program.

NEW SECTION. Sec. 2. The Washington state patrol in conjunction with the traffic safety commission shall use a small percentage of the revenues generated under the 1993 amendments to RCW 46.61.515 contained in section 1, chapter . . . , Laws of 1993 (section 1 of this act), to perform a study to determine a mechanism for evaluating the best practice for increasing the conviction rate for persons driving under the influence of alcohol or drugs. The study must be completed and a report made to the appropriate committees of the legislature by June 30, 1995.

NEW SECTION. Sec. 3. The 1993 amendments to section 1 of this act expire June 30, 1995.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 19, 1993.

Passed the Senate April 14, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 240

[Engrossed Substitute House Bill 1140]

## METROPOLITAN MUNICIPAL CORPORATIONS—REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to metropolitan municipal corporations; amending RCW 35.58.030, 35.58.040, 35.58.090, 35.58.120, 35.58.230, 35.58.270, 35.58.300, 35.58.320, 35.58.340, 35.58.350, 35.58.410, 39.36.020, 35.58.450, 35.58.460, 35.58.490, 35.58.500, 35.58.520, and 35.58.530; and repealing RCW 35.58.118, 35.58.440, and 35A.57.010.

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

**Sec. 1.** RCW 35.58.030 and 1965 c 7 s 35.58.030 are each amended to read as follows:

Any area of the state containing two or more cities, at least one of which is ~~((a city of the first class))~~ of ten thousand or more population, may organize as a metropolitan municipal corporation for the performance of certain functions, as provided in this chapter. The boundaries of a metropolitan municipal corporation may not be expanded to include territory located in a county other than a component county except as a result of the consolidation of two or more contiguous metropolitan municipal corporations.

**Sec. 2.** RCW 35.58.040 and 1991 c 363 s 39 are each amended to read as follows:

At the time of its formation no metropolitan municipal corporation shall include only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of such corporation. If subsequent to the formation of a metropolitan municipal corporation a part only of any city shall be included within the boundaries of a metropolitan municipal corporation such part shall be deemed to be "unincorporated" for the purpose of selecting a member of the metropolitan council pursuant to RCW 35.58.120(3) and such city shall neither select nor participate in the selection of a member on the metropolitan council pursuant to RCW 35.58.120.

Any metropolitan municipal corporation now existing ~~((or hereafter created;))~~ within a county with a population of ~~((from two hundred ten thousand to less than one million bordering a county with a population of one million or more, or within a county with a population of))~~ one million or more ~~((;))~~ shall, upon May 21, 1971, ~~((as to metropolitan corporations existing on such date or upon the date of formation as to metropolitan corporations formed after May 21, 1971;))~~ have the same boundaries as those of the respective central county of such metropolitan corporation ~~((;—PROVIDED, That))~~. The boundaries of such metropolitan corporation may not be enlarged or diminished after such date by annexation as provided in chapter 35.58 RCW ((as now or hereafter amended)) and any purported annexation of territory shall be deemed void. Any contiguous metropolitan municipal corporations may be consolidated into a single metropolitan municipal corporation upon such terms, for the purpose of performing such metropolitan function or functions, and to be effective at such time as may be approved by resolutions of the respective metropolitan councils. In the event of

such consolidation the component city with the largest population shall be the central city of such consolidated metropolitan municipal corporation and the component county with the largest population shall be the central county of such consolidated metropolitan municipal corporation.

Sec. 3. RCW 35.58.090 and 1973 1st ex.s. c 195 s 23 are each amended to read as follows:

The election on the formation of the metropolitan municipal corporation shall be conducted by the auditor of the central county in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the ~~((board of))~~ county ~~((commissioners))~~ legislative authority of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless ~~((he))~~ that person is a qualified voter under the laws of the state in effect at the time of such election and has resided within the metropolitan area for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"FORMATION OF METROPOLITAN MUNICIPAL CORPORATION

Shall a metropolitan municipal corporation be established for the area described in a resolution of the ~~((board of commissioners))~~ county legislative authority of . . . . . county adopted on the . . . . day of . . . . ., 19. . . ., to perform the metropolitan functions of . . . . . (here insert the title of each of the functions to be authorized as set forth in the petition or initial resolution).

- YES . . . . . 
NO . . . . .

If a majority of the persons voting on the proposition residing within the central city shall vote in favor thereof and a majority of the persons voting on the proposition residing in the metropolitan area outside of the central city shall vote in favor thereof, the metropolitan municipal corporation shall thereupon be established and the ~~((board of commissioners))~~ county legislative authority of the central county shall adopt a resolution setting a time and place for the first meeting of the metropolitan council which shall be held not later than ~~((thirty))~~ sixty days after the date of such election. A copy of such resolution shall be transmitted to the legislative body of each component city and county and of each special district which shall be affected by the particular metropolitan functions authorized.

At the same election there shall be submitted to the voters residing within the metropolitan area, for their approval or rejection, a proposition authorizing

the metropolitan municipal corporation, if formed, to levy at the earliest time permitted by law on all taxable property located within the metropolitan municipal corporation a general tax, for one year, of twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the metropolitan municipal corporation. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR TWENTY-FIVE CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

Shall the metropolitan municipal corporation, if formed, levy a general tax of twenty-five cents per thousand dollars of assessed value for one year upon all the taxable property within said corporation in excess of the constitutional and/or statutory tax limits for authorized purposes of the corporation?

- YES ..... 
NO .....

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the proposition to levy such tax, with a forty percent validation requirement, in the manner set forth in Article VII, section 2(a) of the Constitution of this state((, as amended by Amendment 59 and as thereafter amended)).

Sec. 4. RCW 35.58.120 and 1983 c 92 s 1 are each amended to read as follows:

Unless the rights, powers, functions, and obligations of a metropolitan municipal corporation have been assumed by a county as provided in chapter 36.56 RCW, a metropolitan municipal corporation shall be governed by a metropolitan council composed of ((the following:

(1) One member (a) who shall be the elected county executive of the central county, or (b) if there shall be no elected county executive, one member who shall be selected by, and from, the board of commissioners of the central county;

(2) One additional member for each county commissioner district or county council district which shall contain fifteen thousand or more persons residing within the metropolitan municipal corporation, who shall be the county commissioner or county councilman from such district;

(3) One additional member selected by the board of commissioners or county council of each component county for each county commissioner district or county council district containing fifteen thousand or more persons residing in the unincorporated portion of such commissioner district lying within the metropolitan municipal corporation each such appointee to be a resident of such unincorporated portion;



~~(4) One member from each component city which shall have a population of fifteen thousand or more persons, who shall be the mayor of such city, if such city shall have the mayor-council form of government, and in other cities shall be selected by, and from, the mayor and city council of each of such cities.~~

~~(5) One member representing all component cities which have less than fifteen thousand population each, to be selected by and from the mayors of such smaller cities in the following manner: The mayors of all such cities shall meet prior to July 1 of each even-numbered year at a time and place to be fixed by the metropolitan council. The chairperson of the metropolitan council shall preside. After nominations are made, successive ballots shall be taken until one candidate receives a majority of all votes cast.~~

~~(6) One additional member selected by the city council of each component city containing a population of fifteen thousand or more for each fifty thousand population over and above the first fifteen thousand, such members to be selected from such city council until all councilmen are members and thereafter to be selected from other officers of such city.~~

~~(7) For any metropolitan municipal corporation which shall be authorized to perform the function of metropolitan water pollution abatement, two additional members who shall be commissioners of a sewer district or a water district which is operating a sewer system and is a component part of the metropolitan municipal corporation and shall participate only in those council actions which relate to the performance of the function of metropolitan water pollution abatement. The commissioners of all such sewer districts and water districts which are component parts of the metropolitan municipal corporation shall meet on the first Tuesday of the month following May 21, 1971 and thereafter on the second Tuesday of June of each even-numbered year at seven o'clock p.m. at the office of the board of county commissioners of the central county. After election of a chairman, nominations shall be made to select members to serve on the metropolitan council and successive ballots taken for each member until one candidate receives a majority of votes cast. The two members so selected shall not be from districts whose boundaries come within ten miles of each other.~~

~~(8) One member, who shall be chairman of the metropolitan council, selected by the other members of the council. The member shall not hold any public office of or be an employee of any component city or component county of the metropolitan municipal corporation)) elected officials of the component counties and component cities, and possibly other persons, as determined by agreement of each of the component counties and the component cities equal in number to at least twenty-five percent of the total number of component cities that have at least seventy-five percent of the combined component city populations. The agreement shall remain in effect until altered in the same manner as the initial composition is determined.~~

Sec. 5. RCW 35.58.230 and 1965 c 7 s 35.58.230 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water advisory committee to be formed by notifying the legislative body of each component city which operates a water system to appoint one person to serve on such advisory committee and the board of commissioners of each water district, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a water district commissioner. The metropolitan water advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council with respect to matters relating to the performance of the water supply function.

The requirement to create a metropolitan water advisory committee shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW.

**Sec. 6.** RCW 35.58.270 and 1967 c 105 s 12 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation with a commission form of management, a metropolitan transit commission shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan transit commission shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan transportation facilities, including but not limited to the power to construct, acquire, maintain, operate, extend, alter, repair, control and manage a local public transportation system within and without the metropolitan area, to establish new passenger transportation services and to alter, curtail, or abolish any services as the commission may deem desirable and to fix tolls and fares.

The comprehensive plan for public transportation service and any amendments thereof shall be adopted by the metropolitan council and the metropolitan transit commission shall provide transportation facilities and service consistent with such plan. The metropolitan transit commission shall authorize expenditures for transportation purposes within the budget adopted by the metropolitan council. Tolls and fares may be fixed or altered by the commission only after approval thereof by the metropolitan council. Bonds of the metropolitan municipal corporation for public transportation purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan transit commission shall consist of seven members. Six of such members shall be appointed by the metropolitan council and the seventh member shall be the chairman of the metropolitan council who shall be ex officio the chairman of the metropolitan transit commission. Three of the six appointed

members of the commission shall be residents of the central city and three shall be residents of the metropolitan area outside of the central city. The three central city members of the first metropolitan transit commission shall be selected from the existing transit commission of the central city, if there be a transit commission in such city. The terms of first appointees shall be for one, two, three, four, five and six years, respectively. Thereafter, commissioners shall serve for a term of four years. Compensation of transit commissioners shall be determined by the metropolitan council.

The requirement to create a metropolitan transit commission shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW.

**Sec. 7.** RCW 35.58.300 and 1965 c 7 s 35.58.300 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan parks and parkways, a metropolitan park board shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan park board shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan park and parkway facilities.

The metropolitan park board shall authorize expenditures for park and parkway purposes within the budget adopted by the metropolitan council. Bonds of the metropolitan municipal corporation for park and parkway purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan park board shall consist of five members appointed by the metropolitan council at least two of whom shall be residents of the central city. The terms of first appointees shall be for one, two, three, four and five years, respectively. Thereafter members shall serve for a term of four years. Compensation of park board members shall be determined by the metropolitan council.

The requirement to create a metropolitan park board shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW.

**Sec. 8.** RCW 35.58.320 and 1965 c 7 s 35.58.320 are each amended to read as follows:

A metropolitan municipal corporation shall have power to acquire by purchase and condemnation all lands and property rights, both within and without the metropolitan area, which are necessary for its purposes. Such right of eminent domain shall be exercised by the metropolitan council in the same manner and by the same procedure as is or may be provided by law for cities (~~(of the first class)~~), except insofar as such laws may be inconsistent with the provisions of this chapter.

**Sec. 9.** RCW 35.58.340 and 1965 c 7 s 35.58.340 are each amended to read as follows:

Except as otherwise provided herein, a metropolitan municipal corporation may sell, or otherwise dispose of any real or personal property acquired in connection with any authorized metropolitan function and which is no longer required for the purposes of the metropolitan municipal corporation in the same manner as provided for cities (~~of the first class~~). When the metropolitan council determines that a metropolitan facility or any part thereof which has been acquired from a component city or county without compensation is no longer required for metropolitan purposes, but is required as a local facility by the city or county from which it was acquired, the metropolitan council shall by resolution transfer it to such city or county.

**Sec. 10.** RCW 35.58.350 and 1965 c 7 s 35.58.350 are each amended to read as follows:

All the powers and functions of a metropolitan municipal corporation shall be vested in the metropolitan council unless expressly vested in specific officers, boards, or commissions by this chapter, or vested in the county legislative authority of a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation as provided in chapter 36.56 RCW. Without limitation of the foregoing authority, or of other powers given it by this chapter, the metropolitan council shall have the following powers:

(1) To establish offices, departments, boards and commissions in addition to those provided by this chapter which are necessary to carry out the purposes of the metropolitan municipal corporation, and to prescribe the functions, powers and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the metropolitan municipal corporation except those whose appointment or removal is otherwise provided by this chapter.

(3) To fix the salaries, wages and other compensation of all officers and employees of the metropolitan municipal corporation unless the same shall be otherwise fixed in this chapter.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the metropolitan municipal corporation.

**Sec. 11.** RCW 35.58.410 and 1965 c 7 s 35.58.410 are each amended to read as follows:

(1) On or before the third Monday in June of each year, each metropolitan municipal corporation shall adopt a budget for the following calendar year. Such budget shall include a separate section for each authorized metropolitan function. Expenditures shall be segregated as to operation and maintenance expenses and capital and betterment outlays. Administrative and other expense general to the corporation shall be allocated between the authorized metropolitan functions. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from

the preceding year. (~~The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities and counties in the manner provided in this chapter.~~) The metropolitan council shall not be required to confine capital or betterment expenditures made from bond proceeds or emergency expenditures to items provided in the budget. The affirmative vote of three-fourths of all members of the metropolitan council shall be required to authorize emergency expenditures.

(2) Subsection (1) of this section shall not apply to a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW. This subsection (2) shall apply only to each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW.

Each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall, on or before the third Monday in June of each year, prepare an estimate of all revenues to be collected during the following calendar year, including any surplus funds remaining unexpended from the preceding year for each authorized metropolitan function.

By June 30 of each year, the county shall adopt the rate for sewage disposal that will be charged to component cities and sewer districts during the following budget year.

As long as any general obligation indebtedness remains outstanding that was issued by the metropolitan municipal corporation prior to the assumption by the county, the county shall continue to impose the taxes authorized by RCW 82.14.045 and 35.58.273(5) at the maximum rates and on all of the taxable events authorized by law. If, despite the continued imposition of those taxes, the estimate of revenues made on or before the third Monday in June shows that estimated revenues will be insufficient to make all debt service payments falling due in the following calendar year on all general obligation indebtedness issued by the metropolitan municipal corporation prior to the assumption by the county of the rights, powers, functions, and obligations of the metropolitan municipal corporation, the remaining amount required to make the debt service payments shall be designated as "supplemental income" and shall be obtained from component cities and component counties as provided under RCW 35.58.420.

The county shall prepare and adopt a budget each year in accordance with applicable general law or county charter. If supplemental income has been designated under this subsection, the supplemental income shall be reflected in the budget that is adopted. If during the budget year the actual tax revenues from the taxes imposed under the authority of RCW 82.14.045 and 35.58.273(5) exceed the estimates upon which the supplemental income was based, the difference shall be refunded to the component cities and component counties in proportion to their payments promptly after the end of the budget year. A county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall not be

required to confine capital or betterment expenditures for authorized metropolitan functions from bond proceeds or emergency expenditures to items provided in the budget.

**Sec. 12.** RCW 39.36.020 and 1971 ex.s. c 218 s 1 are each amended to read as follows:

(1) Except as otherwise expressly provided by law or in subsections (2), (3) and (4) of this section, no taxing district shall for any purpose become indebted in any manner to an amount exceeding three-eighths of one percent of the value of the taxable property in such taxing district without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness incurred at any time exceed one and one-fourth percent on the value of the taxable property therein.

(2) Counties, cities, towns, and public hospital districts are limited to an indebtedness amount not exceeding three-fourths of one percent of the value of the taxable property in such counties, cities, towns, or public hospital districts without the assent of three-fifths of the voters therein voting at an election held for that purpose. In cases requiring such assent counties, cities, towns, and public hospital districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein. However, any county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW may become indebted to a larger amount for its authorized metropolitan functions, as provided under chapter 35.58 RCW, but not exceeding an additional three-fourths of one percent of the value of the taxable property in the county without the assent of three-fifths of the voters therein voting at an election held for that purpose, and in cases requiring such assent not exceeding an additional two and one-half percent of the value of the taxable property in the county.

(3) School districts are limited to an indebtedness amount not exceeding three-eighths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein voting at an election held for that purpose. In cases requiring such assent school districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein.

(4) No part of the indebtedness allowed in this chapter shall be incurred for any purpose other than strictly county, city, town, school district, township, port district, metropolitan park district, or other municipal purposes: PROVIDED, That a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional, determined as herein provided, for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the city or town; and a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional for acquiring or developing open space and park facilities: PROVID-

ED FURTHER, That any school district may become indebted to a larger amount but not exceeding two and one-half percent additional for capital outlays.

(5) Such indebtedness may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of indebtedness which could then lawfully be incurred. Such indebtedness may be incurred in one or more series of bonds from time to time out of such authorization but at no time shall the total general indebtedness of any taxing district exceed the above limitation.

The term "value of the taxable property" as used in this section shall have the meaning set forth in RCW 39.36.015.

**Sec. 13.** RCW 35.58.450 and 1984 c 186 s 18 are each amended to read as follows:

Notwithstanding the limitations of chapter 39.36 RCW and any other statutory limitations otherwise applicable and limiting municipal debt, a metropolitan municipal corporation shall have the power to contract indebtedness and issue general obligation bonds and to pledge the full faith and credit of the corporation to the payment thereof, for any authorized capital purpose of the metropolitan municipal corporation, not to exceed an amount, together with any outstanding nonvoter approved general indebtedness, equal to three-fourths of one percent of the value of the taxable property within the metropolitan municipal corporation, as the term "value of the taxable property" is defined in RCW 39.36.015. A metropolitan municipal corporation may additionally contract indebtedness and issue general obligation bonds, for any authorized capital purpose of a metropolitan municipal corporation, together with any other outstanding general indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the corporation, as the term "value of the taxable property" is defined in RCW 39.36.015, when a proposition authorizing the indebtedness has been approved by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of (~~votes cast~~) voters voting within the area of said metropolitan municipal corporation at the last preceding state general election. Such general obligation bonds may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of bonds which could then lawfully be issued. Such bonds may be issued in one or more series from time to time out of such authorization. The elections shall be held pursuant to RCW 39.36.050.

Whenever the voters of a metropolitan municipal corporation have, pursuant to RCW 84.52.056, approved excess property tax levies to retire such bond issues, both the principal of and interest on such general obligation bonds may be made payable from annual tax levies to be made upon all the taxable property within the metropolitan municipal corporation in excess of the constitutional and/or statutory tax limit. The principal of and interest on any general obligation bond may be made payable from any other taxes or any special assessments

which the metropolitan municipal corporation may be authorized to levy or from any otherwise unpledged revenue which may be derived from the ownership or operation of properties or facilities incident to the performance of the authorized function for which such bonds are issued or may be made payable from any combination of the foregoing sources. The metropolitan council may include in the principal amount of such bond issue an amount for engineering, architectural, planning, financial, legal, urban design and other services incident to acquisition or construction solely for authorized capital purposes (~~and may include an amount to establish a guaranty fund for revenue bonds issued solely for capital purposes~~)).

General obligation bonds shall be issued and sold by the metropolitan council as provided in chapter 39.46 RCW and shall mature in not to exceed forty years from the date of issue.

**Sec. 14.** RCW 35.58.460 and 1983 c 167 s 48 are each amended to read as follows:

(1) A metropolitan municipal corporation may issue revenue bonds to provide funds to carry out its authorized metropolitan water pollution abatement, water supply, garbage disposal or transportation purposes, without submitting the matter to the voters of the metropolitan municipal corporation. The metropolitan council shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the metropolitan council may obligate the metropolitan municipal corporation to pay such amounts of the gross revenue of the particular utility constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the metropolitan council shall determine and may obligate the metropolitan municipal corporation to pay such amounts out of otherwise unpledged revenue which may be derived from the ownership, use or operation of properties or facilities owned, used or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes or other sources of payment lawfully authorized for such purpose, as the metropolitan council shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such utility or any other revenue, fees, tolls, charges, tariffs, fares, special taxes or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the metropolitan municipal corporation.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest



as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the metropolitan council shall deem proper; shall be payable at such time or times and at such places as shall be determined by the metropolitan council; shall bear interest at such rate or rates as shall be determined by the metropolitan council; shall be signed by the chairman and attested by the secretary of the metropolitan council, ~~((one))~~ any of which signatures may be ~~((\*))~~ facsimile signatures, and the seal of the metropolitan municipal corporation shall be impressed or imprinted thereon; any attached interest coupons shall be signed by the facsimile signatures of said officials.

Such revenue bonds shall be sold in such manner, at such price and at such rate or rates of interest as the metropolitan council shall deem to be for the best interests of the metropolitan municipal corporation, either at public or private sale.

The metropolitan council may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guarantee the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guarantee the payment of such principal and interest, to maintain rates sufficient to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the metropolitan council may deem necessary to accomplish the most advantageous sale of such bonds. The metropolitan council may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The metropolitan council may include in the principal amount of any such revenue bond issue an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any such metropolitan facilities plus six months. The metropolitan council may, if it deems it to the best interest of the metropolitan municipal corporation, provide in any contract for the construction or acquisition of any metropolitan facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds at the par value thereof.

If the metropolitan municipal corporation shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the metropolitan municipal corporation and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

**Sec. 15.** RCW 35.58.490 and 1965 c 7 s 35.58.490 are each amended to read as follows:

~~(If a metropolitan municipal corporation shall have been authorized to levy a general tax on all taxable property located within the metropolitan municipal corporation in the manner provided in this chapter, either at the time of the formation of the metropolitan municipal corporation or subsequently, the))~~ A metropolitan council shall have the power to authorize the issuance of interest bearing warrants on such terms and conditions as the metropolitan council shall provide~~(, same to be repaid from the proceeds of such tax when collected))~~ and to repay the interest bearing warrants with any moneys legally authorized for such purposes, including tax receipts where appropriate.

**Sec. 16.** RCW 35.58.500 and 1965 c 7 s 35.58.500 are each amended to read as follows:

The metropolitan municipal corporation shall have the power to levy special assessments payable over a period of not exceeding twenty years on all property within the metropolitan area specially benefited by any improvement, on the basis of special benefits conferred, to pay in whole, or in part, the damages or costs of any such improvement, and for such purpose may establish local improvement districts and enlarged local improvement districts, issue local improvement warrants and bonds to be repaid by the collection of local improvement assessments and generally to exercise with respect to any improvements which it may be authorized to construct or acquire the same powers as may now or hereafter be conferred by law upon cities ~~((of the first class))~~. Such local improvement districts shall be created and such special assessments levied and collected and local improvement warrants and bonds issued and sold in the same manner as shall now or hereafter be provided by law for cities ~~((of the first class))~~. The duties imposed upon the city treasurer under such acts shall be imposed upon the treasurer of the county in which such local improvement district shall be located.

A metropolitan municipal corporation may provide that special benefit assessments levied in any local improvement district may be paid into such revenue bond redemption fund or funds as may be designated by the metropolitan council to secure the payment of revenue bonds issued to provide funds to pay the cost of improvements for which such assessments were levied. If local improvement district assessments shall be levied for payment into a revenue bond fund, the local improvement district created therefor shall be designated a utility local improvement district. A metropolitan municipal corporation that creates a utility local improvement district shall conform with the laws relating to utility local improvement districts created by a city.

**Sec. 17.** RCW 35.58.520 and 1965 c 7 s 35.58.520 are each amended to read as follows:

A metropolitan municipal corporation shall have the power to invest its funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in ~~((property or securities in which mutual savings~~

~~banks may legally invest funds subject to their control~~) any investments in which a city is authorized to invest, as provided in RCW 35.39.030.

**Sec. 18.** RCW 35.58.530 and 1969 ex.s. c 135 s 3 are each amended to read as follows:

Territory located within a component county that is annexed to a component city after the establishment of a metropolitan municipal corporation shall by such act be annexed to ~~((such))~~ the metropolitan municipal corporation. Territory within a metropolitan municipal corporation may be annexed to a city which is not within such metropolitan municipal corporation in the manner provided by law and in such event either (1) such city may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of the city concurred in by resolution of the metropolitan council, or (2) if such city shall not be so annexed such territory shall remain within the metropolitan municipal corporation unless such city shall by resolution of its legislative body request the withdrawal of such territory subject to any outstanding indebtedness of the metropolitan corporation and the metropolitan council shall by resolution consent to such withdrawal.

Any territory located within a component county that is contiguous to a metropolitan municipal corporation and lying wholly within an incorporated city or town may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of such city or town requesting such annexation concurred in by resolution of the metropolitan council.

Any other territory located within a component county that is adjacent to a metropolitan municipal corporation may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in this chapter. An election to annex such territory may be called pursuant to a petition or resolution in the following manner:

(1) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the territory to be annexed and shall be filed with the auditor of the central county.

(2) A resolution calling for such an election may be adopted by the metropolitan council.

Any resolution or petition calling for such an election shall describe the boundaries of the territory to be annexed, and state that the annexation of such territory to the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons or property within the metropolitan municipal corporation and within the territory proposed to be annexed.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. ~~((For the purpose of examining the signatures on such petition, the auditor shall be permitted access to the voter registration books of each city within the territory proposed to be annexed and of each county a portion of which shall be located within the territory proposed to be annexed. No person may withdraw his name from a petition after it has been filed with the auditor.))~~ Within thirty days following

the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his certificate as to the sufficiency thereof.

**NEW SECTION.** Sec. 19. The following acts or parts of acts are each repealed:

- (1) RCW 35.58.118 and 1971 ex.s. c 303 s 4 & 1967 c 105 s 10;
- (2) RCW 35.58.440 and 1965 c 7 s 35.58.440; and
- (3) RCW 35A.57.010 and 1967 ex.s. c 119 s 35A.57.010.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 241

[House Bill 1165]

### FAMILY COURT—COURT-AUTHORIZED GUARDIAN AD LITEM PROGRAMS

Effective Date: 7/25/93

AN ACT Relating to guardians ad litem; amending RCW 13.34.030 and 13.34.100; reenacting and amending RCW 26.44.053; adding a new section to chapter 13.34 RCW; and creating a new section.

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

**Sec. 1.** RCW 13.34.030 and 1988 c 176 s 901 are each amended to read as follows:

For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years;

(2) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has evidenced either by statement or conduct, a settled intent to forego, for an extended period, all parental rights or all parental responsibilities despite an ability to do so;

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Who has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Who has a developmental disability, as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian together with the department determines that services appropriate to the child's needs can not be provided in the home. However, (a), (b), and (c) of this subsection may still be applied if other reasons for removal of the child from the home exist;

(3) "Guardian ad litem" means a person, appointed by the court to represent the best interest of a child in a proceeding under this chapter, or in any matter

which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter;

(4) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

**Sec. 2.** RCW 13.34.100 and 1988 c 232 s 1 are each amended to read as follows:

(1) The court shall in all contested cases appoint ~~((an attorney and/or))~~ a guardian ad litem for a child who is ~~((a party to the proceedings in all contested proceedings))~~ the subject of an action under this chapter, unless a court~~((:))~~ for good cause~~((:))~~ finds the appointment unnecessary. ~~((An attorney and/or))~~ A guardian ad litem may be appointed at the discretion of the court in uncontested proceedings~~((: PROVIDED, That))~~. The requirement of a guardian ad litem shall be deemed satisfied if the child is represented by independent counsel in the proceedings. ~~((A))~~

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed. ~~((Such attorney and/or))~~

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) Training related to the guardian's duties;
- (c) Number of years' experience as a guardian ad litem;
- (d) Number of appointments as a guardian ad litem; and
- (e) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter. ((A report by the guardian ad litem to the court shall contain, where relevant, information on the legal status of a child's membership in any Indian tribe or band.))

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

NEW SECTION. Sec. 3. A new section is added to chapter 13.34 RCW to read as follows:

(1) Unless otherwise directed by the court, the duties of the guardian ad litem include but are not limited to the following:

(a) To represent and be an advocate for the best interests of the child;

(b) To collect relevant information about the child's situation;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order; and

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band.

(2) The guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(4), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100.

**Sec. 4.** RCW 26.44.053 and 1987 c 524 s 11 and 1987 c 206 s 7 are each reenacted and amended to read as follows:

(1) In any contested judicial proceeding in which it is alleged that a child has been subjected to child abuse or neglect, the court shall appoint a guardian ad litem for the child: PROVIDED, That the requirement of a guardian ad litem (~~shall~~) may be deemed satisfied if the child is represented by counsel in the proceedings.

(2) At any time prior to or during a hearing in such a case, the court may, on its own motion, or the motion of the guardian ad litem, or other parties, order the examination by a physician, psychologist, or psychiatrist, of any parent or child or other person having custody of the child at the time of the alleged child abuse or neglect, if the court finds such an examination is necessary to the proper determination of the case. The hearing may be continued pending the completion of such examination. The physician, psychologist, or psychiatrist conducting such an examination may be required to testify concerning the results of such examination and may be asked to give his or her opinion as to whether the protection of the child requires that he or she not be returned to the custody of his or her parents or other persons having custody of him or her at the time of the alleged child abuse or neglect. Persons so testifying shall be subject to cross-examination as are other witnesses. No information given at any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person or custodian concerning the abuse or neglect of the child.

(3) A parent or other person having legal custody of a child alleged to be (~~a child subjected to abuse or neglect~~) abused or neglected shall be a party to any proceeding that may (~~as a practical matter~~) impair or impede such person's interest in and custody or control of (~~his or her~~) the child.

**NEW SECTION. Sec. 5.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed the House April 19, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

CHAPTER 242

[Engrossed Substitute House Bill 1233]

MOTOR VEHICLE INSURANCE—PERSONAL INJURY PROTECTION BENEFITS

Effective Date: 7/25/93 - Except Sections 1 through 5 which become effective on 7/1/94

AN ACT Relating to mandatory offering of personal injury protection insurance; adding new sections to chapter 48.22 RCW; creating a new section; 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) "Automobile" means a passenger car as defined in RCW 46.04.382 registered or principally garaged in this state other than:

- (a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads;
- (b) A vehicle operated on rails or crawler-treads;
- (c) A vehicle located for use as a residence;
- (d) A motor home as defined in RCW 46.04.305; or
- (e) A moped as defined in RCW 46.04.304.

(2) "Bodily injury" means bodily injury, sickness, or disease, including death at any time resulting from the injury, sickness, or disease.

(3) "Income continuation benefits" means payments of at least eighty-five percent of the insured's loss of income from work, because of bodily injury sustained by him or her in the accident, less income earned during the benefit payment period. The benefit payment period begins fourteen days after the date of the accident and ends at the earliest of the following:

- (a) The date on which the insured is reasonably able to perform the duties of his or her usual occupation;
  - (b) The expiration of not more than fifty-two weeks from the fourteenth day;
- or
- (c) The date of the insured's death.

(4) "Insured automobile" means an automobile described on the declarations page of the policy.

(5) "Insured" means:

(a) The named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or

(b) A person who sustains bodily injury caused by accident while: (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered, and ending the earliest of the following:



(a) The date on which the insured person is reasonably able to perform those services;

(b) The expiration of fifty-two weeks; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and necessary ambulance, hospital, and professional nursing service.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person and arising out of the ownership, maintenance, or use of an insured automobile.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in sections 1 through 5 of this act.

**NEW SECTION. Sec. 2.** (1) No new automobile liability insurance policy or renewal of such an existing policy may be issued unless personal injury protection coverage benefits at limits established in this chapter for medical and hospital expenses, funeral expenses, income continuation, and loss of services sustained by an insured because of bodily injury caused by an automobile accident are offered as an optional coverage.

(2) A named insured may reject, in writing, personal injury protection coverage and the requirements of subsection (1) of this section shall not apply. If a named insured has rejected personal injury protection coverage, that rejection shall be valid and binding as to all levels of coverage and on all persons who might have otherwise been insured under such coverage. If a named insured has rejected personal injury protection coverage, such coverage shall not be included in any supplemental, renewal, or replacement policy unless a named insured subsequently requests such coverage in writing.

**NEW SECTION. Sec. 3.** (1) Personal injury protection coverage need not be provided for vendor's single interest policies, general liability policies, or other policies, commonly known as umbrella policies, that apply only as excess to the automobile liability policy directly applicable to the insured motor vehicle.

(2) Personal injury protection coverage need not be provided to or on behalf of:

(a) A person who intentionally causes injury to himself or herself;

(b) A person who is injured while participating in a prearranged or organized racing or speed contest or in practice or preparation for such a contest;

(c) A person whose bodily injury is due to war, whether or not declared, or to an act or condition incident to such circumstances;

(d) A person whose bodily injury results from the radioactive, toxic, explosive, or other hazardous properties of nuclear material;

(e) The named insured or a relative while occupying a motor vehicle owned by the named insured or furnished for the named insured's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made;

(f) A relative while occupying a motor vehicle owned by the relative or furnished for the relative's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made; or

(g) An insured whose bodily injury results or arises from the insured's use of an automobile in the commission of a felony.

**NEW SECTION. Sec. 4.** Insurers providing automobile insurance policies must offer minimum personal injury protection coverage for each insured with maximum benefit limits as follows:

(1) Medical and hospital benefits of ten thousand dollars for expenses incurred within three years of the automobile accident;

(2) Benefits for funeral expenses in an amount of two thousand dollars;

(3) Income continuation benefits covering income losses incurred within one year after the date of the insured's injury in an amount of ten thousand dollars, subject to a limit of the lesser of two hundred dollars per week or eighty-five percent of the weekly income. The combined weekly payment receivable by the insured under any workers' compensation or other disability insurance benefits or other income continuation benefit and this insurance may not exceed eighty-five percent of the insured's weekly income;

(4) Loss of services benefits in an amount of five thousand dollars, subject to a limit of forty dollars per day not to exceed two hundred dollars per week; and

(5) Payments made under personal injury protection coverage are limited to the amount of actual loss or expense incurred.

**NEW SECTION. Sec. 5.** In lieu of minimum coverage required under section 4 of this act, an insurer providing automobile liability insurance policies shall offer and provide, upon request, personal injury protection coverage with benefit limits for each insured of:

(1) Up to thirty-five thousand dollars for medical and hospital benefits incurred within three years of the automobile accident;

(2) Up to two thousand dollars for funeral expenses incurred;

(3) Up to thirty-five thousand dollars for one year's income continuation benefits, subject to a limit of the lesser of seven hundred dollars per week or eighty-five percent of the weekly income; and

(4) Up to forty dollars per day for loss of services benefits, for up to one year from the date of the automobile accident.

Payments made under personal injury protection coverage are limited to the amount of actual loss or expense incurred.

**NEW SECTION.** **Sec. 6.** Sections 1 through 5 of this act are each added to chapter 48.22 RCW.

**NEW SECTION.** **Sec. 7.** 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. 8.** Sections 1 through 5 of this act shall take effect July 1, 1994.

**NEW SECTION.** **Sec. 9.** The commissioner may adopt such rules as are necessary to implement sections 1 through 5 of this act.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 243

[Engrossed Substitute House Bill 1259]

### FORFEITED FIREARMS—DESTRUCTION, SALE, OR TRADE OF

**Effective Date: 5/7/93**

AN ACT Relating to forfeiture of firearms; amending RCW 9.41.098; and declaring an emergency.

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

**Sec. 1.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read as follows:

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: **PROVIDED**, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) Found in the possession or under the control of a person at the time the person committed or was arrested for committing a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniform controlled substances act, chapter 69.50 RCW;

(d) Found concealed on a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under

the influence of intoxicating liquor, having 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's breath, blood, or other bodily substance;

(e) Found in the possession of a person prohibited from possessing the firearm under RCW 9.41.040;

(f) Found in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a crime of violence or a crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) Found in the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Known to have been used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Known to have been used in the commission of a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniformed controlled substances act, chapter 69.50 RCW.

(2) Upon order of forfeiture, the court in its discretion shall order destruction of any firearm that is illegal for any person to possess. ~~((All firearms legal for citizen possession that are judicially forfeited or forfeited due to failure to make a claim under RCW 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to commercial sellers once a year if the submitting agency has accumulated at least ten firearms authorized for sale. Law enforcement agencies may conduct joint auctions for the purpose of maximizing efficiency. A maximum of ten percent of such firearms may be retained for use by local law enforcement agencies and the Washington state patrol. Before submission for auction, a court may temporarily retain forfeited firearms if needed for evidence. The proceeds from any sale shall be divided as follows: The local jurisdiction and the Washington state patrol shall retain its costs, including actual costs of storage and sale, and shall forward the remainder to the state department of wildlife for use in its firearms training program pursuant to RCW 77.32.155.~~

~~If a firearm is delivered to a law enforcement agency and the agency no longer requires use of the firearm, the agency shall dispose of the firearm by auction as provided by this subsection. The public auctioning agency shall, as a minimum, maintain a record of all forfeited firearms by manufacturer, model, caliber, serial number, date and circumstances of forfeiture, and final disposition. The records shall be open to public inspection and copying.)~~ A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority. This

subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993, and applies only if the law enforcement agency has complied with (b) of this subsection.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding the effective date of this act; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 77.12.720. All trades or auctions of firearms under this subsection shall be to commercial sellers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 77.12.720.

(c) Antique firearms as defined by RCW 9.41.150 and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, and firearms are exempt from destruction and shall be disposed of by auction or trade to commercial sellers.

(d) Firearms in the possession of the Washington state patrol on or after the effective date of this act that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to commercial sellers. The Washington state patrol may retain any proceeds of an auction or trade.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

**NEW SECTION. Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 244

[Substitute House Bill 1318]

### BOATING SAFETY LAWS—RECODIFICATION OF

**Effective Date:** 7/25/93 - Except Section 41 which becomes effective on 6/30/94

AN ACT Relating to boating safety; amending RCW 7.84.010, 7.84.020, 88.02.110, 88.12.010, 88.12.020, 88.12.330, 88.12.050, 88.12.080, 88.12.130, 88.12.160, 88.12.170, 88.12.180, 88.12.190, 88.12.200, 88.12.210, 88.12.220, 88.12.230, 88.12.250, 88.12.260, 88.12.280, 88.12.290, 88.12.390, 88.12.400, 88.12.410, 88.12.420, 88.12.440, 88.12.450, and 88.02.050; reenacting and amending RCW 88.12.100; adding new sections to chapter 88.12 RCW; adding a new section to chapter 88.02 RCW; creating new sections; recodifying RCW 88.12.010, 88.12.020, 88.12.100, 88.12.110, 88.12.120, 88.12.330, 88.12.050, 88.12.080, 88.12.130, 88.12.140, 88.12.150, 88.12.160, 88.12.170, 88.12.180, 88.12.190, 88.12.200, 88.12.210, 88.12.220, 88.12.280, 88.12.290, 88.12.300, 88.12.320, 88.12.350, 88.12.360, 88.12.380, 88.12.390, 88.12.400, 88.12.410, 88.12.420, 88.12.430, 88.12.440, 88.12.450, 88.12.460, and 88.12.470; repealing RCW 82.49.070, 88.12.030, 88.12.040, 88.12.090, 88.12.240, 88.12.270, 88.12.310, 88.12.340, and 88.12.480; prescribing penalties; and providing an effective date.

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

**NEW SECTION. Sec. 1.** It is the intent of the legislature that the boating safety laws administered by the state parks and recreation commission provide Washington's citizens with clear and reasonable boating safety regulations and penalties. Therefore, the legislature intends to recodify, clarify, and partially decriminalize the state-wide boating safety laws in order to help the boating community understand and comply with these laws.

It is also the intent of the legislature to increase boat registration fees in order to provide additional funds to local governments for boating safety enforcement and education programs. The funds are to be used for enforcement, education, training, and equipment, including vessel noise measurement equipment. The legislature encourages programs that provide boating safety

education in the primary and secondary school system for boat users and potential future boat users. The legislature also encourages boating safety programs that use volunteer and private sector efforts to enhance boating safety and education.

**Sec. 2.** RCW 7.84.010 and 1987 c 380 s 1 are each amended to read as follows:

The legislature declares that decriminalizing certain offenses contained in Titles 75, 76, 77, and 79 RCW and chapters 43.30 ~~((and))~~, 43.51, and 88.12 RCW and any rules adopted pursuant to those titles and chapters would promote the more efficient administration of those titles and chapters. The purpose of this chapter is to provide a just, uniform, and efficient procedure for adjudicating those violations which, in any of these titles and chapters or rules adopted under these chapters or titles, are declared not to be criminal offenses. The legislature respectfully requests the supreme court to prescribe any rules of procedure necessary to implement this chapter.

**Sec. 3.** RCW 7.84.020 and 1987 c 380 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title 75, 76, 77, or 79 RCW or chapter 43.30 ~~((or))~~, 43.51, or 88.12 RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter.

**Sec. 4.** RCW 88.02.110 and 1987 c 149 s 13 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a violation of this chapter ~~((RCW 43.51.400))~~ and the rules adopted by the department ~~((and the state parks and recreation commission))~~ pursuant to these statutes is a misdemeanor punishable only by a fine not to exceed one hundred dollars per vessel for the first violation. Subsequent violations in the same year are subject to the following fines:

(a) For the second violation, a fine of two hundred dollars per vessel;

(b) For the third and successive violations, a fine of four hundred dollars per vessel.

(2) After subtraction of court costs and administrative collection fees, moneys collected under this section shall be credited to the current expense fund of the arresting jurisdiction.

(3) All law enforcement officers shall have the authority to enforce this chapter ~~((RCW 43.51.400))~~, and the rules adopted by the department ~~((and the state parks and recreation commission))~~ pursuant to these statutes within their respective jurisdictions: PROVIDED, That a city, town, or county may contract with a fire protection district for such enforcement and fire protection districts are authorized to engage in such activities.

Sec. 5. RCW 88.12.010 and 1933 c 72 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(2) "Boater" means any person on a vessel on waters of the state of Washington.

(3) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire on waters of the state.

(4) "Commission" means the state parks and recreation commission.

(5) "Darkness" (~~is herein defined to be~~) means that period between (~~one-half hour after~~) sunset and (~~one-half hour before~~) sunrise.

(~~"Waters", as used herein, are defined as any lake, pond or other body of water.~~)

(6) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming areas, diversity of species, the absence of other pollution sources, or other characteristics.

(7) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(8) "Motor driven boats and vessels" (~~are defined herein as~~) means all boats and vessels which are self propelled.

(9) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(10) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(11) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(12) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.



(13) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(14) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cushion that is designed to float a person in the water and that is approved by the commission.

(15) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(16) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(17) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(18) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(19) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(20) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(21) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, and small rafts or flotation devices or toys customarily used by swimmers.

(22) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(23) "Waters of the state" means any waters within the territorial limits of Washington state.

(24) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the state as listed in RCW 88.12.300.

NEW SECTION. Sec. 6. A new section is added to chapter 88.12 RCW to read as follows:

(1) It is a misdemeanor, punishable under RCW 9.92.030, for any person to commit a violation designated as an infraction under this chapter, if during a period of three hundred sixty-five days the person has previously committed two infractions for violating the same provision under this chapter and if the violation

is also committed during such period and is of the same provision as the previous violations.

(2) A violation designated in this chapter as a civil infraction shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court pursuant to chapter 7.84 RCW.

Sec. 7. RCW 88.12.020 and 1933 c 72 s 2 are each amended to read as follows:

~~((Every person operating or driving a motor propelled boat or vessel on any waters in the state, shall drive the same in a careful and prudent manner at a))~~  
A person shall not operate a vessel in a negligent manner. For the purposes of this section, to "operate in a negligent manner" means operating a vessel in disregard of careful and prudent operation, or in disregard of careful and prudent rates of speed that are no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead, effects of vessel wake, and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters. Except as provided in section 6 of this act, a violation of this section is an infraction under chapter 7.84 RCW.

Sec. 8. RCW 88.12.100 and 1990 c 231 s 3 and 1990 c 31 s 1 are each reenacted and amended to read as follows:

(1) It shall be unlawful for any person to operate a vessel in a ~~((negligent))~~ reckless manner. ~~((For the purpose of this section, to "operate in a negligent manner" shall be construed to mean the operation of a vessel in such manner as to endanger or be likely to endanger any persons or property or to operate at a rate of speed greater than will permit the operator in the exercise of reasonable care to bring the vessel to a safe stop.))~~

(2) ~~((A person is guilty of operating a vessel while under the influence of intoxicating liquor or any drug if the person operates a vessel within this state while))~~ It shall be a violation for a person to operate a vessel while under the influence of intoxicating liquor or any drug. A person is considered to be under the influence of intoxicating liquor or any drug if:

(a) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) The person has 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) ~~((For the purposes of this section, "vessel" means any watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.~~

~~(4) For the purpose of this section, "vessel operator" means a person who is in actual physical control of a vessel.~~

~~(5)) A violation of this section is a misdemeanor, punishable ((by up to ninety days in jail and by a fine of not more than one thousand dollars)) as provided under RCW 9.92.030. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.~~

**Sec. 9.** RCW 88.12.330 and 1988 c 36 s 73 are each amended to read as follows:

(1) Every ~~((peace))~~ law enforcement officer of this state and its political subdivisions has the authority to enforce this chapter. Law enforcement officers may enforce recreational boating rules adopted by the commission. Such law enforcement officers include, but are not limited to, county sheriffs, officers of other local law enforcement entities, wildlife agents of the department of wildlife and fisheries patrol officers of the department of fisheries, through their directors, the state patrol, through its chief, ((county sheriffs, and other local law enforcement bodies, shall assist in the enforcement)) and state park rangers. In the exercise of this responsibility, all such officers may stop and board any ~~((watercraft))~~ vessel and direct it to a suitable pier or anchorage ~~((for boarding))~~ to enforce this chapter.

~~(2) ((A person, while operating a watercraft on any waters of this state, shall not knowingly flee or attempt to elude a law enforcement officer after having received a signal from the law enforcement officer to bring the boat to a stop.~~

~~(3)) This chapter shall be construed to supplement federal laws and regulations. To the extent this chapter is inconsistent with federal laws and regulations, the federal laws and regulations shall control.~~

**NEW SECTION.** **Sec. 10.** A new section is added to chapter 88.12 RCW to read as follows:

In addition to the equipment standards prescribed under this chapter, the commission shall adopt rules specifying equipment standards for vessels. Except where the violation is classified as a misdemeanor under this chapter, violation of any equipment standard adopted by the commission is an infraction under chapter 7.84 RCW.

**NEW SECTION.** **Sec. 11.** A new section is added to chapter 88.12 RCW to read as follows:

An operator or owner who endangers a vessel, or the persons on board the vessel, by showing, masking, extinguishing, altering, or removing any light or signal or by exhibiting any false light or signal, is guilty of a misdemeanor, punishable as provided in RCW 9.92.030.

NEW SECTION. **Sec. 12.** A new section is added to chapter 88.12 RCW to read as follows:

(1) The commission shall adopt rules providing for its inspection and approval of the personal flotation devices that may be used to satisfy the requirements of this chapter and governing the manner in which such devices shall be used. The commission shall prescribe the different types of devices that are appropriate for the different uses, such as water skiing or operation of a personal watercraft. In adopting its rules the commission shall consider the United States coast guard rules or regulations. The commission may approve devices inspected and approved by the coast guard without conducting any inspection of the devices itself.

(2) In situations where personal flotation devices are required under provisions of this chapter, the devices shall be in good and serviceable condition and of appropriate size. If they are not, then they shall not be considered as personal flotation devices under such provisions.

NEW SECTION. **Sec. 13.** A new section is added to chapter 88.12 RCW to read as follows:

If an infraction is issued under this chapter because a vessel does not contain the required equipment and if the operator is not the owner of the vessel, but is operating the vessel with the express or implied permission of the owner, then either or both operator or owner may be cited for the infraction.

**Sec. 14.** RCW 88.12.050 and 1933 c 72 s 5 are each amended to read as follows:

~~((Every motor driven boat operating on any such waters and carrying passengers for hire or leased for hire, shall have a life preserver or life float for each passenger said boat or vessel has capacity to carry, placed or attached in such manner as to be convenient for use.))~~

(1) No person may operate or permit the operation of a vessel on the waters of the state without a personal flotation device on board for each person on the vessel. Each personal flotation device shall be in serviceable condition, of an appropriate size, and readily accessible.

(2) Except as provided in section 6 of this act, a violation of subsection (1) of this section is an infraction under chapter 7.84 RCW if the vessel is not carrying passengers for hire.

(3) A violation of subsection (1) of this section is a misdemeanor punishable under RCW 9.92.030, if the vessel is carrying passengers for hire.

**Sec. 15.** RCW 88.12.080 and 1990 c 231 s 1 are each amended to read as follows:

(1) The purpose of this section is to promote safety in water skiing on the waters of Washington state, provide a means of ensuring safe water skiing and promote the enjoyment of water skiing.

~~(2) (When used in this section, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.~~

~~(a) "Operator" means the individual in physical control of a vessel. The operator of a personal watercraft shall be at least fourteen years of age.~~

~~(b) "Observer" means the individual riding in a vessel who shall be responsible for observing the water skier at all times. The observer and the operator shall not be the same person. The observer shall be an individual who meets the minimum qualifications for an observer established by rules of the state parks and recreation commission.~~

~~(c) "Personal watercraft" means a vessel of less than sixteen feet which uses a motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.~~

~~(d) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.~~

~~(e) "Waters of Washington state" means any waters within the territorial limits of Washington state.~~

~~(3)) No vessel ((which has in tow a person or persons on water skis, or similar contrivance shall be operated)) operator may tow or attempt to tow a water skier on any waters of Washington state unless such craft shall be occupied by at least an operator and an observer. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons fall into the water, and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright red or brilliant orange color, measuring at least twelve inches square, mounted on a pole not less than twenty-four inches long and displayed as to be visible from every direction. This subsection does not apply to a personal watercraft, the design of which makes no provision for carrying an operator or any other person on board, and that is actually operated by the person or persons being towed. Every remote-operated personal watercraft shall have a flag attached which meets the requirements of this subsection. Except as provided under section 6 of this act, a violation of this subsection is an infraction under chapter 7.84 RCW.~~

(3) The observer and the operator shall not be the same person. The observer shall be an individual who meets the minimum qualifications for an observer established by rules of the commission. Except as provided under section 6 of this act, a violation of this subsection is an infraction under chapter 7.84 RCW.

(4) No person shall engage or attempt to engage in water skiing(~~(, or operate or ride on a personal watercraft,)~~) without wearing ~~((an adequate and effective United States coast guard approved type I, II, III, or V personal flotation device in good and serviceable condition and of appropriate size, or a wet suit which is approved for personal flotation by the United States coast guard. A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel. It is unlawful for any person to remove or disable a cutoff switch which was installed by the manufacturer))~~ a personal flotation device. Except as provided under section 6 of this act, a violation of this subsection is an infraction under chapter 7.84 RCW.

(5) No person shall engage or attempt to engage in water skiing, or operate any vessel to tow a water skier, on the waters of Washington state during the period from one hour after sunset until one hour prior to sunrise. A violation of this subsection is a misdemeanor, punishable as provided under RCW 9.92.030.

~~(6) ((No person shall operate a personal watercraft on the waters of Washington state during the period from sunset until sunrise.~~

~~(7))~~ No person engaged in water skiing(~~(, or the operation of a personal watercraft,)~~) either as operator, observer, or skier, shall conduct himself or herself in a ~~((negligent))~~ reckless manner that willfully or wantonly endangers, or is likely to endanger, any person or property. A violation of this subsection is a misdemeanor as provided under RCW 9.92.030.

~~((8))~~ (7) The requirements of subsections (2), (3), (4), and (5) of this section shall not apply to persons engaged in tournaments, competitions, or exhibitions that have been authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

~~((9) It shall be unlawful for a person to lease, hire, or rent a personal watercraft to any person who is under sixteen years of age.))~~

NEW SECTION. Sec. 16. A new section is added to chapter 88.12 RCW to read as follows:

(1) A person shall not load or permit to be loaded a vessel with passengers or cargo beyond its safe carrying ability or carry passengers or cargo in an unsafe manner taking into consideration weather and other existing operating conditions.

(2) A person shall not operate or permit to be operated a vessel equipped with a motor or other propulsion machinery of a power beyond the vessel's ability to operate safely, taking into consideration the vessel's type, use, and construction, the weather conditions, and other existing operating conditions.

(3) A violation of subsection (1) or (2) of this section is an infraction punishable as provided under chapter 7.84 RCW except as provided under section 6 of this act or where the overloading or overpowering is reasonably advisable to effect a rescue or for some similar emergency purpose.

(4) If it appears reasonably certain to any law enforcement officer that a person is operating a vessel clearly loaded or powered beyond its safe operating ability and in the judgment of that officer the operation creates an especially hazardous condition, the officer may direct the operator to take immediate and reasonable steps necessary for the safety of the individuals on board the vessel, including directing the operator to return to shore or a mooring and to remain there until the situation creating the hazard is corrected or ended. Failure to follow the direction of an officer under this subsection is a misdemeanor punishable as provided under RCW 9.92.030.

**NEW SECTION. Sec. 17.** A new section is added to chapter 88.12 RCW to read as follows:

(1) A person shall not operate a personal watercraft unless each person aboard the personal watercraft is wearing a personal flotation device approved by the commission. Except as provided for in section 6 of this act, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel. It is unlawful for any person to remove or disable a cutoff switch that was installed by the manufacturer.

(3) A person shall not operate a personal watercraft during darkness.

(4) A person under the age of fourteen shall not operate a personal watercraft on the waters of this state.

(5) A person shall not operate a personal watercraft in a reckless manner, including recklessly weaving through congested vessel traffic, recklessly jumping the wake of another vessel unreasonably or unnecessarily close to the vessel or when visibility around the vessel is obstructed, or recklessly swerving at the last possible moment to avoid collision.

(6) A person shall not lease, hire, or rent a personal watercraft to a person under the age of sixteen.

(7) Subsections (1) through (6) of this section shall not apply to a performer engaged in a professional exhibition or a person participating in a regatta, race, marine parade, tournament, or exhibition authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

(8) Violations of subsections (2) through (6) of this section constitute a misdemeanor under RCW 9.92.030.

**Sec. 18.** RCW 88.12.130 and 1984 c 183 s 1 are each amended to read as follows:

(1) The operator of a vessel involved in a collision, accident, or other casualty, to the extent the operator can do so without serious danger to the operator's own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident. Under no circumstances may the rendering

of assistance or other compliance with this section be evidence of the liability of such operator for the collision, accident, or casualty. ~~((The operator shall also give his or her name, address, and the identification of the operator's vessel to the state parks and recreation commission and any person injured and to the owner of any property damaged))~~ The operator shall also give all pertinent accident information, as specified by rule by the commission, to the law enforcement agency having jurisdiction: PROVIDED, That this requirement shall not apply to operators of vessels when they are participating in an organized competitive event ~~((covered by a permit issued by the United States coast guard))~~ authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events. These duties are in addition to any duties otherwise imposed by law. Except as provided for in section 6 of this act, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) Any person who complies with subsection (1) of this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person acts as any reasonably prudent person would have acted under the same or similar circumstances.

**Sec. 19.** RCW 88.12.160 and Code 1881 s 3242 are each amended to read as follows:

Any person taking up any ~~((seow, boat, skiff, canoe, or other water craft))~~ vessel found adrift, and out of the custody of the owner, in ~~((any stream or body of water, within, or bordering upon))~~ waters of this state, shall forthwith notify the owner thereof, if to him or her known, or if upon reasonable inquiry he or she can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such ~~((water craft))~~ vessel away.

**Sec. 20.** RCW 88.12.170 and Code 1881 s 3243 are each amended to read as follows:

Such notice shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his or her letters. Such notice shall inform the party where the ~~((seow, boat, skiff, canoe, or other water craft))~~ vessel was taken up, and where it may be found, and what amount the taker-up or finder demands for his or her charges.

**Sec. 21.** RCW 88.12.180 and Code 1881 s 3244 are each amended to read as follows:

In all cases where notice is not given personally, it shall be the duty of the taker-up to post up at the post office nearest the place where such ~~((seow, boat, skiff, canoe, or other water craft))~~ vessel may be taken up, a written notice of the



taking up of such (~~water-craft~~) vessel, which shall contain a description of the same, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. If the taker-up is traveling upon (~~such stream or body of~~) waters of the state, such notice shall be posted up at the first post office he or she shall pass after the taking up; and in all cases, he or she shall at the time when, and place where, he or she posts up such notice, also mail a copy of such notice, directed to the postmaster of each post office on (~~said stream or body of~~) waters of the state, and within fifty miles of the place where such (~~water-craft~~) vessel is taken up.

**Sec. 22.** RCW 88.12.190 and Code 1881 s 3245 are each amended to read as follows:

Every person taking up any (~~seow, boat, skiff, canoe, or other water-craft,~~) vessel so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property, a reasonable compensation for his or her time, services, expenses, and risk in taking up said property, and take notice of the same, to be settled by agreement between the parties. In case (~~he~~) the person has not, within ten days after the taking up, substantially complied with the provisions of this chapter in giving the notice, (~~he~~) the person shall be entitled to no compensation, but he or she shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of (~~said water-craft~~) the vessel, from the time of taking it up until the same is delivered to the owner.

**Sec. 23.** RCW 88.12.200 and 1987 c 202 s 248 are each amended to read as follows:

In case the parties cannot agree on the amount to be paid the taker-up, or the ownership, and the sum claimed is less than one (~~hundred~~) thousand dollars, the owner may file a complaint, setting out the facts, and the judge, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a district judge. If the amount claimed by the taker-up is more than one (~~hundred~~) thousand dollars, the owner shall file his or her complaint in the superior court of the county where the property is, and trial shall be had as in other civil actions; but if the taker-up claims more than one (~~hundred~~) thousand dollars, and a less amount is awarded him or her, he or she shall be liable for all the costs in the superior court; and in all cases where the taker-up shall recover a less amount than has been tendered him or her by the owner or claimant, previous to filing his or her complaint, he or she shall pay the costs before the district judge or in the superior court: PROVIDED, That in all cases the owner, after filing his or her complaint before a district judge, shall be entitled to the possession of (~~such water-craft~~) the vessel, upon giving bond, with security to the satisfaction of the judge, in double the amount claimed by the taker-up. When the complaint is filed in the superior court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay

such costs as shall be awarded to the finder or taker-up of such ~~((seow, boat, skiff, canoe, or other water craft))~~ vessel.

**Sec. 24.** RCW 88.12.210 and Code 1881 s 3247 are each amended to read as follows:

In case the taker-up shall use the ~~((seow, boat, skiff, canoe or other water craft))~~ vessel, more than is necessary to put it into a place of safety, he or she shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his or her neglect to take suitable care of it, he or she shall be liable to the owner for all damage.

**Sec. 25.** RCW 88.12.220 and 1987 c 202 s 249 are each amended to read as follows:

In case such ~~((water craft))~~ vessel is of less value than one hundred dollars, and is not claimed within three months, the taker-up may apply to a district judge of the district where the property is, who, upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence be found, shall order the ~~((seow, boat, skiff, canoe, or other water craft))~~ vessel to be sold, and after paying the taker-up such sum as he or she shall be entitled to, and the costs, the balance shall be paid the county treasurer as is provided in the case of the sale of estrays. In case the ~~((seow, boat, skiff, canoe, or other water craft,))~~ vessel exceeds one hundred dollars, and is not claimed within six months, application shall be made to the superior court of the county, and the same proceeding shall be thereupon had. All sales made under this section shall be conducted as sales of personal property on execution.

**Sec. 26.** RCW 88.12.230 and 1986 c 217 s 1 are each amended to read as follows:

The purpose of ~~((this chapter))~~ RCW 88.12.250 through 88.12.320 is to further the public interest, welfare, and safety by providing for the protection and promotion of safety in the operation of ~~((watercraft))~~ vessels carrying passengers for hire on the whitewater rivers of this state.

**NEW SECTION. Sec. 27.** A new section is added to chapter 88.12 RCW to read as follows:

Except as provided in RCW 88.12.320(3), the commission of a prohibited act under RCW 88.12.250 through 88.12.320 constitutes a misdemeanor, punishable as provided under RCW 9.92.030.

**Sec. 28.** RCW 88.12.250 and 1986 c 217 s 3 are each amended to read as follows:

(1) No person may operate any ~~((watercraft))~~ vessel carrying passengers for hire on whitewater rivers in a manner that interferes with other ~~((watercraft))~~ vessels or with the free and proper navigation of the rivers of this state.

(2) Every operator of a ~~((watercraft))~~ vessel carrying passengers for hire on whitewater rivers shall at all times operate the ~~((watercraft))~~ vessel in a careful

and prudent manner and at such a speed as to not endanger the life, limb, or property of any person.

(3) No ~~((watercraft))~~ vessel carrying passengers for hire on whitewater rivers may be loaded with passengers or cargo beyond its safe carrying capacity taking into consideration the type and construction of the ~~((watercraft))~~ vessel and other existing operating conditions. In the case of inflatable ~~((rafts))~~ vessels, safe carrying capacity in whitewater shall be considered as less than the United States Coast Guard capacity rating for each ~~((watercraft))~~ vessel. This subsection shall not apply in cases of an unexpected emergency on the river.

(4) Individuals licensed under chapter 77.32 RCW and acting as fishing guides are exempt from section 27 of this act and RCW 88.12.260 through 88.12.320.

**Sec. 29.** RCW 88.12.260 and 1986 c 217 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, ~~((watercraft))~~ vessels on whitewater rivers proceeding downstream have the right of way over ~~((watercraft))~~ vessels proceeding upstream.

(2) In all cases, ~~((watercraft))~~ vessels not under power proceeding downstream on whitewater rivers have the right of way over motorized craft underway.

**Sec. 30.** RCW 88.12.280 and 1986 c 217 s 6 are each amended to read as follows:

(1) While carrying passengers for hire on whitewater rivers ~~((sections))~~ in this state, the operator and owner of the vessel shall:

~~((1))~~ (a) If using inflatable ~~((watercraft))~~ vessels, use only ~~((watercraft))~~ vessels with three or more separate air chambers;

~~((2))~~ (b) Ensure that all passengers and operators are wearing a securely fastened ~~((United States Coast Guard approved type III or type V life jacket in good condition))~~ personal flotation device;

~~((3))~~ (c) Ensure that each ~~((watercraft))~~ vessel has accessible a spare United States coast guard-approved type III or type V ~~((life-jacket))~~ personal flotation device in good repair;

~~((4))~~ (d) Ensure that each ~~((watercraft))~~ vessel has on it a bagged throwable line with a floating line and bag;

~~((5))~~ (e) Ensure that each ~~((watercraft))~~ vessel has accessible an adequate first-aid kit;

~~((6))~~ (f) Ensure that each ~~((watercraft))~~ vessel has a spare propelling device;

~~((7))~~ (g) Ensure that a repair kit and air pump are accessible to inflatable ~~((watercraft))~~ vessel; and

~~((8))~~ (h) Ensure that equipment to prevent and treat hypothermia is accessible to all ~~((watercraft))~~ vessels on a trip.

(2) No person may operate on the whitewater rivers of this state a vessel carrying passengers for hire unless the person has successfully completed a lifesaving training course meeting standards adopted by the commission.

**Sec. 31.** RCW 88.12.290 and 1986 c 217 s 7 are each amended to read as follows:

(1) (~~Watercraft~~) Vessel operators and passengers on any trip carrying passengers for hire on whitewater rivers of the state shall not allow the use of alcohol during the course of a trip on a whitewater river section in this state.

(2) Any (~~watercraft~~) vessel carrying passengers for hire on any whitewater river section in this state must be accompanied by at least one other (~~watercraft~~) vessel under the supervision of the same operator or owner or being operated by a person registered under RCW 88.12.320 or an operator under the direction or control of a person registered under RCW 88.12.320.

**Sec. 32.** RCW 88.12.390 and 1989 c 393 s 4 are each amended to read as follows:

(1) A marina which meets one or more of the following criteria shall be designated by the commission as appropriate for installation of a sewage pumpout or (~~sewage~~) dump (~~station~~) unit:

(a) The marina is located in an environmentally sensitive or polluted area;  
or

(b) The marina has one hundred twenty-five slips or more and there is a lack of sewage pumpout(~~s~~) or dump units within a reasonable distance.

(2) In addition to subsection (1) of this section, the commission may at its discretion designate a marina as appropriate for installation of a sewage pumpout or (~~sewage~~) dump (~~station~~) unit if there is a demonstrated need for a sewage pumpout or (~~sewage~~) dump (~~station~~) unit at the marina based on professionally conducted studies undertaken by federal, state, or local government, or the private sector; and it meets the following criteria:

(a) The marina provides commercial services, such as sales of food, fuel or supplies, or overnight or live-aboard moorage opportunities;

(b) The marina is located at a heavily used boating destination or on a heavily traveled route, as determined by the commission; or

(c) There is a lack of adequate sewage pumpout (~~station~~) or dump unit capacity within a reasonable distance.

(3) Exceptions to the designation made under this section may be made by the commission if no sewer, septic, water, or electrical services are available at the marina.

(4) In addition to marinas, the commission may designate boat launches or boater destinations as appropriate for installation of a sewage pumpout or (~~sewage~~) dump (~~station~~) unit based on the criteria found in subsections (1) and (2) of this section.

**Sec. 33.** RCW 88.12.400 and 1989 c 393 s 5 are each amended to read as follows:

(1) Marinas and boat launches designated as appropriate for installation of a sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit under RCW 88.12.390 shall be eligible for funding support for installation of such facilities from funds specified in RCW 88.12.450. The commission shall notify owners or operators of all designated marinas and boat launches of the designation, and of the availability of funding to support installation of appropriate sewage disposal facilities. The commission shall encourage the owners and operators to apply for available funding.

(2) The commission shall seek to provide the most cost-efficient and accessible facilities possible for reducing the amount of boat waste entering the state's waters. The commission shall consider providing funding support for portable pumpout facilities in this effort.

(3) The commission shall contract with, or enter into an interagency agreement with another state agency to contract with, applicants based on the criteria specified below:

(a)(i) Contracts may be awarded to publicly owned, tribal, or privately owned marinas or boat launches.

(ii) Contracts may provide for state reimbursement to cover eligible costs as deemed reasonable by commission rule. Eligible costs include purchase, installation, or major renovation of the sewage pumpout or ~~((sewage))~~ dump ~~((stations))~~ units, including sewer, water, electrical connections, and those costs attendant to the purchase, installation, and other necessary appurtenances, such as required pier space, as determined by the commission.

(iii) Ownership of the sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit will be retained by the state through the commission in privately owned marinas. Ownership of the sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit in publicly owned marinas will be held by the public entity.

(iv) Operation, normal and expected maintenance, and ongoing utility costs will be the responsibility of the ~~((marina or boat launch operator))~~ contract recipient. The sewage pumpout or ~~((sewage))~~ dump ~~((station must))~~ unit shall be kept in operating condition and available for public use at all times during operating hours of the facility, excluding necessary maintenance periods.

(v) The ~~((marina owner))~~ contract recipient agrees to allow the installation, existence and use of the sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit by granting an ~~((easement))~~ irrevocable license for a minimum of ten years at no cost ~~((for such purposes))~~ to the commission.

(b) Contracts awarded pursuant to (a) of this subsection shall be subject, for a period of at least ten years, to the following conditions:

(i) Any ~~((facility))~~ contract recipient entering into a contract under this section must allow the boating public access to the sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit during operating hours.

(ii) The ~~((applicant))~~ contract recipient must agree to monitor and encourage the use of the sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit, and to

cooperate in any related boater environmental education program administered or approved by the commission.

(iii) The ~~((applicant))~~ contract recipient must agree not to charge a fee for the use of the sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit.

(iv) The ~~((applicant))~~ contract recipient must agree to arrange and pay a reasonable fee for a periodic inspection of the sewage pumpout ~~((facility))~~ or dump unit by the local health department or appropriate authority.

(v) Use of a free sewage pumpout or ~~((sewage))~~ dump ~~((station))~~ unit by the boating public shall be deemed to be included in the term "outdoor recreation" for the purposes of chapter 4.24 RCW.

**Sec. 34.** RCW 88.12.410 and 1989 c 393 s 6 are each amended to read as follows:

The department of ecology, in consultation with the commission, shall, for initiation of the state-wide program only, develop criteria for the design, installation, and operation of sewage pumpout and ~~((sewage))~~ dump ~~((stations))~~ units, taking into consideration the ease of access to the ~~((station))~~ unit by the boating public. The department of ecology may adopt rules to administer the provisions of this section.

**Sec. 35.** RCW 88.12.420 and 1989 c 393 s 7 are each amended to read as follows:

The commission shall undertake a state-wide boater environmental education program concerning the effects of boat wastes. The boater environmental education program shall provide informational materials on proper boat waste disposal methods, environmentally safe boat maintenance practices, locations of sewage pumpout and ~~((sewage))~~ dump ~~((stations))~~ units, and boat oil recycling facilities.

**Sec. 36.** RCW 88.12.440 and 1989 c 393 s 9 are each amended to read as follows:

The commission shall, in consultation with interested parties, review progress on installation of sewage pumpout and ~~((sewage))~~ dump ~~((stations))~~ units, the boater environmental education program, and the boating safety program. The commission shall report its findings to the legislature by December 1994.

**Sec. 37.** RCW 88.12.450 and 1989 c 393 s 11 are each amended to read as follows:

The amounts allocated in accordance with RCW 82.49.030(3) shall be expended upon appropriation in accordance with the following limitations:

(1) Thirty percent of the funds shall be appropriated to the interagency committee for outdoor recreation and be expended for use by state and local government for public recreational waterway boater access and boater destination sites. Priority shall be given to critical site acquisition. The interagency committee for outdoor recreation shall administer such funds as a competitive

grants program. The amounts provided for in this subsection shall be evenly divided between state and local governments.

(2) Thirty percent of the funds shall be expended by the commission exclusively for sewage pumpout or ~~((sewage))~~ dump ~~((stations))~~ units at publicly and privately owned marinas as provided for in RCW 88.12.390 and 88.12.400.

(3) Twenty-five percent of the funds shall be expended for grants to state agencies and other public entities to enforce boating safety and registration laws and to carry out boating safety programs. The commission shall administer such grant program.

(4) Fifteen percent shall be expended for instructional materials, programs or grants to the public school system, public entities, or other nonprofit community organizations to support boating safety and boater environmental education or boat waste management planning. The commission shall administer this program.

**Sec. 38.** RCW 88.02.050 and 1989 c 17 s 1 are each amended to read as follows:

Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of ~~((six\*))~~ ten dollars and fifty cents per year and the excise tax imposed under chapter 82.49 RCW. Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the ~~((six-dollar\*))~~ ten dollar and fifty cent annual registration fee.

Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee and excise tax. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping

stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form will be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar.

**NEW SECTION. Sec. 39.** A new section is added to chapter 88.12 RCW to read as follows:

(1) All motor-propelled vessels shall be equipped and maintained with an effective muffler that is in good working order and in constant use. For the purpose of this section, an effective muffler or underwater exhaust system does not produce sound levels in excess of ninety decibels when subjected to a stationary sound level test that shall be prescribed by rules adopted by the commission, as of the effective date of this section, and for engines manufactured on or after January 1, 1994, a noise level of eighty-eight decibels when subjected to a stationary sound level test that shall be prescribed by rules adopted by the commission.

(2) A vessel that does not meet the requirements of subsection (1) of this section shall not be operated on the waters of this state.

(3) No person may operate a vessel on waters of the state in such a manner as to exceed a noise level of seventy-five decibels measured from any point on the shoreline of the body of water on which the vessel is being operated that shall be specified by rules adopted by the commission, as of the effective date of this section. Such measurement shall not preclude a stationary sound level test that shall be prescribed by rules adopted by the commission.

(4) This section does not apply to: (a) A vessel tuning up, testing for, or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate governmental agency; or (b) a vessel being operated by a vessel or marine engine manufacturer for the purpose of testing or development. Nothing in this subsection prevents local governments from adopting ordinances to control the frequency, duration, and location of vessel testing, tune-up, and racing.

(5) Any officer authorized to enforce this section who has reason to believe that a vessel is not in compliance with the noise levels established in this section may direct the operator of the vessel to submit the vessel to an on-site test to measure noise level, with the officer on board if the officer chooses, and the operator shall comply with such request. If the vessel exceeds the decibel levels established in this section, the officer may direct the operator to take immediate and reasonable measures to correct the violation.



(6) Any officer who conducts vessel sound level tests as provided in this section shall be qualified in vessel noise testing. Qualifications shall include but may not be limited to the ability to select the appropriate measurement site and the calibration and use of noise testing equipment.

(7) A person shall not remove, alter, or otherwise modify in any way a muffler or muffler system in a manner that will prevent it from being operated in accordance with this chapter.

(8) A person shall not manufacture, sell, or offer for sale any vessel that is not equipped with a muffler or muffler system that does not comply with this chapter. This subsection shall not apply to power vessels designed, manufactured, and sold for the sole purpose of competing in racing events and for no other purpose. Any such exemption or exception shall be documented in any and every sale agreement and shall be formally acknowledged by signature on the part of both the buyer and the seller. Copies of the agreement shall be maintained by both parties. A copy shall be kept on board whenever the vessel is operated.

(9) Except as provided in section 6 of this act, a violation of this section is an infraction under chapter 7.84 RCW.

(10) Vessels that are equipped with an engine modified to increase performance beyond the engine manufacturer's stock configuration shall have an exhaust system that complies with the standards in this section after January 1, 1994. Until that date, operators or owners, or both, of such vessels with engines that are out of compliance shall be issued a warning and be given educational materials about types of muffling systems available to muffle noise from such high performance engines.

(11) Nothing in this section preempts a local government from exercising any power that it possesses under the laws or Constitution of the state of Washington to adopt more stringent regulations.

**NEW SECTION.** Sec. 40. A new section is added to chapter 88.02 RCW to read as follows:

Jurisdictions receiving funds under RCW 88.02.040 shall deposit such funds into an account dedicated solely for supporting the jurisdiction's boating safety programs. These funds shall not supplant existing local funds used for boating safety programs.

**NEW SECTION.** Sec. 41. RCW 82.49.070 and 1988 c 261 s 1, 1985 c 7 s 155, 1984 c 250 s 4, & 1983 2nd ex.s. c 3 s 49 are each repealed.

**NEW SECTION.** Sec. 42. Section 41 of this act shall take effect June 30, 1994.

**NEW SECTION.** Sec. 43. Section 38 of this act applies to registrations expiring June 30, 1995, and thereafter.

**NEW SECTION.** Sec. 44. The following acts or parts of acts are each repealed:

- (1) RCW 88.12.030 and 1933 c 72 s 3;
- (2) RCW 88.12.040 and 1990 c 231 s 2 & 1933 c 72 s 4;
- (3) RCW 88.12.090 and 1933 c 72 s 6;
- (4) RCW 88.12.240 and 1986 c 217 s 2;
- (5) RCW 88.12.270 and 1986 c 217 s 5;
- (6) RCW 88.12.310 and 1986 c 217 s 9;
- (7) RCW 88.12.340 and 1986 c 217 s 12; and
- (8) RCW 88.12.480 and 1992 c 100 s 8.

NEW SECTION. **Sec. 45.** (1) The code reviser shall correct all statutory references to sections recodified by this section.

(2) The following sections shall be codified or recodified in the following order in chapter 88.12 RCW:

- RCW 88.12.010
- RCW 88.12.— (section 6 of this act)
- RCW 88.12.020
- RCW 88.12.100
- RCW 88.12.110
- RCW 88.12.120
- RCW 88.12.330
- RCW 88.12.— (section 10 of this act)
- RCW 88.12.— (section 11 of this act)
- RCW 88.12.— (section 39 of this act)
- RCW 88.12.— (section 12 of this act)
- RCW 88.12.— (section 13 of this act)
- RCW 88.12.050
- RCW 88.12.080
- RCW 88.12.— (section 16 of this act)
- RCW 88.12.— (section 17 of this act)
- RCW 88.12.130
- RCW 88.12.140
- RCW 88.12.150
- RCW 88.12.160
- RCW 88.12.170
- RCW 88.12.180
- RCW 88.12.190
- RCW 88.12.200
- RCW 88.12.210
- RCW 88.12.220
- RCW 88.12.— (section 27 of this act)
- RCW 88.12.280
- RCW 88.12.290
- RCW 88.12.300
- RCW 88.12.320
- RCW 88.12.350

RCW 88.12.360  
RCW 88.12.380  
RCW 88.12.390  
RCW 88.12.400  
RCW 88.12.410  
RCW 88.12.420  
RCW 88.12.430  
RCW 88.12.440  
RCW 88.12.450  
RCW 88.12.460  
RCW 88.12.470.

Passed the House April 20, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 245

[Engrossed Substitute House Bill 1326]

### ENERGY CONSERVATION MEASURES—EXTENSION OF PAYMENT RESPONSIBILITY TO SUBSEQUENT OWNERS

Effective Date: 7/25/93

AN ACT Relating to conservation tariffs allowing transfer of payment obligations to successive property owners; adding a new section to chapter 80.28 RCW; adding a new section to chapter 64.04 RCW; adding a new section to chapter 48.29 RCW; and creating a new section.

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

**NEW SECTION.** Sec. 1. (1) The legislature finds that:

(a) The ability of utilities to acquire cost effective conservation measures is instrumental in assuring that Washington citizens have reasonable energy rates and that utilities have adequate energy resources to meet future energy demands;

(b) Customers may be more willing to accept investments in energy efficiency and conservation if real and perceived impediments to property transactions are avoided;

(c) Potential purchasers of real property should be notified of any utility conservation charges at the earliest point possible in the sale.

(2) It is the intent of the legislature to encourage utilities to develop innovative approaches designed to promote energy efficiency and conservation that have limited rate impacts on utility customers. It is not the intent of the legislature to restrict the authority of the utilities and transportation commission to approve tariff schedules.

(3) It is also the intent of the legislature that utilities which establish conservation tariffs should undertake measures to assure that potential purchasers

of property are aware of the existence of any conservation tariffs. Measures that may be considered include, but are not limited to:

- (a) Recording a notice of a conservation tariff payment obligation, containing a legal description, with the county property records;
- (b) Annually notifying customers who have entered agreements of the conservation tariff obligation;
- (c) Working with the real estate industry to provide for disclosure of conservation tariff obligations in standardized listing agreements and earnest money agreements; and
- (d) Working with title insurers to provide recorded conservation tariff obligations as an informational note to the preliminary commitment for policy of title insurance.

**NEW SECTION.** Sec. 2. A new section is added to chapter 80.28 RCW to read as follows:

(1) Upon request by an electrical or gas company, the commission may approve a tariff schedule that contains rates or charges for energy conservation measures, services, or payments provided to individual property owners or customers. The tariff schedule shall require the electrical or gas company to enter into an agreement with the property owner or customer receiving services at the time the conservation measures, services, or payments are initially provided. The tariff schedule may allow for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made.

(2) The electrical or gas company shall record a notice of a payment obligation, containing a legal description, resulting from an agreement under this section with the county auditor or recording officer as provided in RCW 65.04.030.

(3) The commission may prescribe by rule other methods by which an electrical or gas company shall notify property owners or customers of any such payment obligation.

**NEW SECTION.** Sec. 3. A new section is added to chapter 64.04 RCW to read as follows:

Prior to closing, the seller of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to section 2 of this act shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation.

**NEW SECTION.** Sec. 4. A new section is added to chapter 48.29 RCW to read as follows:

The existence of notices of payment obligations in section 2 of this act may be disclosed as an informational note to a preliminary commitment for policy of title insurance. Neither the inclusion nor the exclusion of any such informational note shall create any liability against such title insurer under any preliminary commitment for title insurance, policy or otherwise.

Passed the House April 19, 1993.  
 Passed the Senate April 12, 1993.  
 Approved by the Governor May 7, 1993.  
 Filed in Office of Secretary of State May 7, 1993.

**CHAPTER 246**

[House Bill 1344]

**AXLE WEIGHT LIMITS REVISED**

Effective Date: 7/25/93

AN ACT Relating to vehicle axles; and reenacting and amending RCW 46.44.041.

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

**Sec. 1.** RCW 46.44.041 and 1988 c 229 s 1 and 1988 c 6 s 2 are each reenacted and amended to read as follows:

No vehicle or combination of vehicles shall operate upon the public highways of this state with a gross load on any single axle in excess of twenty thousand pounds, or upon any group of axles in excess of that set forth in the following table, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each, if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

Dis- tance in feet between the ex- tremes of any group of 2 or more consecu- tive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8	34,000	42,000						
9	39,000	42,500						

10	40,000	43,500					
11		44,000					
12		45,000	50,000				
13		45,500	50,500				
14		46,500	51,500				
15		47,000	52,000				
16		48,000	52,500	52,500			
17		48,500	53,500	53,500			
18		49,500	54,000	54,000			
19		50,000	54,500	54,500			
20		51,000	55,500	55,500			
21		51,500	56,000	56,000			
22		52,500	56,500	56,500			
23		53,000	57,500	57,500			
24		54,000	58,000	58,000			
25		54,500	58,500	58,500			
26		55,500	59,500	59,500			
27		56,000	60,000	60,000			
28		57,000	60,500	61,000	61,000		
29		57,500	61,500	62,000	62,000		
30		58,500	62,000	63,000	63,000		
31		59,000	62,500	64,000	64,500		
32		60,000	63,500	65,000	65,000		
33			64,000	66,000	66,000		
34			64,500	67,000	67,000		
35			65,500	68,000	68,000		
36			66,000	69,500	69,500		
37			66,500	70,500	70,500		
38			67,500	72,000	72,000		
39			68,000	72,500	72,500		
40			68,500	73,000	73,000		
41			69,500	73,500	73,500		
42			70,000	74,000	74,000		
43			70,500	75,000	75,000		
44			71,500	75,500	75,500		
45			72,000	76,000	76,000		
46			72,500	76,500	80,000	80,000	
47			73,500	77,000	81,000	81,000	
48			74,000	78,000	82,000	82,000	
49			74,500	78,500	83,000	83,000	
50			75,500	79,000	84,000	84,000	
51			76,000	80,000	84,500	85,000	
52			76,500	80,500	85,000	86,000	
53			77,500	81,000	86,000	87,000	
54			78,000	81,500	86,500	88,000	91,000
55			78,500	82,500	87,000	89,000	92,000
56			79,500	83,000	87,500	90,000	93,000
57			80,000	83,500	88,000	91,000	94,000
58				84,000	89,000	92,000	95,000
59				85,000	89,500	93,500	96,000
60				85,500	90,000	95,000	97,000
61				86,000	90,500	95,500	98,000
62				87,000	91,000	96,000	99,000

63	87,500	92,000	97,000	100,000	100,000
64	88,000	92,500	97,500	101,000	101,000
65	88,500	93,000	98,000	102,000	102,000
66	89,500	93,500	98,500	103,000	103,000
67	90,000	94,000	99,000	104,000	104,000
68	90,500	95,000	99,500	105,000	105,000
69	91,000	95,500	100,000	105,500	105,500
70	92,000	96,000	101,000	105,500	105,500

When inches are involved: Under six inches take lower, six inches or over take higher. The maximum load on any axle in any group of axles shall not exceed the single axle or tandem axle allowance as set forth in the table above.

The maximum axle and gross weights specified in this section are subject to the braking requirements set up for the service brakes upon any motor vehicle or combination of vehicles as provided by law.

It is unlawful to operate upon the public highways any single unit vehicle, supported upon three axles or more with a gross weight including load in excess of forty thousand pounds or any combination of vehicles having a gross weight in excess of eighty thousand pounds without first obtaining an additional tonnage permit as provided for in RCW 46.44.095: PROVIDED, That when a combination of vehicles has purchased license tonnage in excess of seventy-two thousand pounds as provided by RCW 46.16.070, such excess license tonnage may be applied to the power unit subject to limitations of RCW 46.44.042 and this section when such vehicle is operated without a trailer.

~~((It is unlawful to operate any vehicle upon the public highways equipped with two axles spaced less than seven feet apart unless the two axles are so constructed and mounted that the difference in weight between the axles does not exceed three thousand pounds. However, variable lift axles are exempt from this requirement. For purposes of this section, a "variable lift axle" is an axle that may be lifted from the roadway surface, whether by air, hydraulic, mechanical, or any combination of these means. The weight allowed on the axle is governed by RCW 46.44.042 and this section.))~~

Loads of not more than eighty thousand pounds which may be legally hauled in the state bordering this state which also has a sales tax, are legal in this state when moving to a port district within four miles of the bordering state except on the interstate system. This provision does not allow the operation of a vehicle combination consisting of a truck tractor and three trailers.

Notwithstanding anything contained herein, a vehicle or combination of vehicles in operation on January 4, 1975, may operate upon the public highways of this state, including the interstate system within the meaning of section 127 of Title 23, United States Code, with an overall gross weight upon a group of two consecutive sets of dual axles which was lawful in this state under the laws, regulations and procedures in effect in this state on January 4, 1975.

Passed the House February 19, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 247**

[House Bill 1355]

**METROPOLITAN PARK DISTRICT DEBT LIMIT INCREASED**

**Effective Date: 7/25/93**

AN ACT Relating to increasing the nonvoter-approved debt limitation for metropolitan park districts; and amending RCW 35.61.100.

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

**Sec. 1.** RCW 35.61.100 and 1989 c 319 s 2 are each amended to read as follows:

Every metropolitan park district through its board of commissioners may contract indebtedness and evidence such indebtedness by the issuance and sale of warrants, short-term obligations as provided by chapter 39.50 RCW, or general obligation bonds, for park, boulevard, aviation landings, playgrounds, and parkway purposes, and the extension and maintenance thereof, not exceeding, together with all other outstanding nonvoter approved general indebtedness, ~~((one-eighth))~~ one-quarter of one percent of the value of the taxable property in such metropolitan park district, as the term "value of the taxable property" is defined in RCW 39.36.015. General obligation bonds shall not be issued with a maximum term in excess of twenty years. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Passed the House March 8, 1993.  
Passed the Senate April 13, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 248**

[House Bill 1411]

**METROPOLITAN PARK DISTRICTS—ACQUISITION OF CONSERVATION FUTURES**

**Effective Date: 7/25/93**

AN ACT Relating to metropolitan park districts; and amending RCW 84.34.210 and 84.34.220.

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

**Sec. 1.** RCW 84.34.210 and 1987 c 341 s 2 are each amended to read as follows:

Any county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW



64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, except by eminent domain, the fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land, farm and agricultural land, and timber land as such are defined in chapter 84.34 RCW for public use or enjoyment. Among interests that may be so acquired are mineral rights. Any county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may acquire such property for the purpose of conveying or leasing the property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property in accordance with the purposes of this 1971 amendatory act.

**Sec. 2.** RCW 84.34.220 and 1987 c 341 s 3 are each amended to read as follows:

In accordance with the authority granted in RCW 84.34.210, a county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may specifically purchase or otherwise acquire, except by eminent domain, rights in perpetuity to future development of any open space land, farm and agricultural land, and timber land which are so designated under the provisions of chapter 84.34 RCW and taxed at current use assessment as provided by that chapter. For the purposes of this 1971 amendatory act, such developmental rights shall be termed "conservation futures". The private owner may retain the right to continue any existing open space use of the land, and to develop any other open space use, but, under the terms of purchase of conservation futures, the county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may forbid or restrict building thereon, or may require that improvements cannot be made without county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, permission. The land may be alienated or sold and used as formerly by the new owner, subject to the terms of the agreement made by the county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, with the original owner.

Passed the House March 10, 1993.  
Passed the Senate April 13, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 249**

[Substitute House Bill 1428]

**TELEPHONE ASSISTANCE PROGRAM CONTINUED**

**Effective Date: 5/7/93**

AN ACT Relating to the Washington telephone assistance program; amending RCW 80.36.450; amending 1990 c 170 s 8 (uncodified); adding a new section to chapter 80.36 RCW; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 80.36 RCW to read as follows:

As used in this chapter, unless the context indicates otherwise, "department" means the department of social and health services.

**Sec. 2.** RCW 80.36.450 and 1987 c 229 s 7 are each amended to read as follows:

~~((Lifeline service))~~ The Washington telephone assistance program shall be limited to one residential access line per eligible household.

**Sec. 3.** 1990 c 170 s 8 (uncodified) is amended to read as follows:

RCW 80.36.410 through 80.36.470 shall expire June 30, ~~((1993))~~ 1998, unless extended by the legislature.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.  
Passed the Senate April 15, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 250

[Engrossed House Bill 1501]

COLLEGE STUDENTS TO RECEIVE INFORMATION ON AMOUNT OF  
STATE SUPPORT PROVIDED THEM

Effective Date: 7/25/93

AN ACT Relating to higher education; and adding a new section to chapter 28B.10 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) The higher education coordinating board shall annually develop information on the approximate amount of state support that students receive. For students at state-supported colleges and universities, the information shall include the approximate level of support received by students in each tuition category. That information may include consideration of the following: Expenditures included in the educational cost formula, revenue forgiven from waived tuition and fees, state-funded financial aid awarded to students at public institutions, and all or a portion of appropriated amounts not reflected in the educational cost formula for institutional programs and services that may affect or enhance the educational experience of students at a particular institution. For students attending a private college, university, or proprietary school, the information shall include the amount of state-funded financial aid awarded to students attending the institution.

(2) Beginning July 30, 1993, the board shall annually provide information appropriate to each institution's student body to each state-supported four-year institution of higher education and to the state board for community and technical colleges for distribution to community and technical colleges.

(3) Beginning July 30, 1993, the board shall annually provide information on the level of financial aid received by students at that institution to each private university, college, or proprietary school, that enrolls students receiving state-funded financial aid.

(4) At least annually, beginning with the 1993 fall academic term, each institution of higher education described in subsection (2) or (3) of this section shall provide to students at the institution information on the approximate amount that the state is contributing to the support of their education. Information provided to students at each state-supported college and university shall include the approximate amount of state support received by students in each tuition category at that institution. The amount of state support shall be based on the information provided by the higher education coordinating board under subsections (1) through (3) of this section. Institutions may use any informational format that is appropriate for their students, including, but not limited to, posters, handouts, and information in students' registration packets.

Passed the House April 20, 1993.  
Passed the Senate April 12, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 251

[Substitute House Bill 1051]

### ALCOHOL OR DRUG CAUSED EMERGENCY RESPONSE—RECOVERY OF COSTS FROM CONVICTED PERSON

Effective Date: 7/25/93

AN ACT Relating to emergency management; amending RCW 9.95.210 and 38.52.010; reenacting and amending RCW 9.94A.030; adding a new section to chapter 38.52 RCW; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that a public agency incurs expenses in an emergency response. It is the intent of the legislature to allow a public agency to recover the expenses of an emergency response to an incident involving persons who operate a motor vehicle, boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or a drug, or the combined influence of an alcoholic beverage and a drug. It is the intent of the legislature that the recovery of expenses of an emergency response under this act shall supplement and shall not supplant other provisions of law relating to the recovery of those expenses.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 38.52 RCW to read as follows:

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

In no event shall a person's liability under this section for the expense of an emergency response exceed one thousand dollars for a particular incident.

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW.

**Sec. 3.** RCW 9.95.210 and 1992 c 86 s 1 are each amended to read as follows:

In granting probation, the court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

In the order granting probation and as a condition thereof, the court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the court shall require the payment of the penalty assessment required by RCW 7.68.035. The court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, (4) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation, ~~(and)~~ (5) to contribute to a county or interlocal drug fund, and (6) to make restitution to a public agency for the costs of an emergency response under section 2 of this act, and may require bonds for the faithful observance of any and all conditions imposed in the probation. The court shall order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow implicitly the instructions of the secretary. If the probationer has been ordered to make restitution, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by

probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

**Sec. 4.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in section 2 of this act.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process

to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit [of] any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.



(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew.

Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

(35) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(36) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Sec. 5. RCW 38.52.010 and 1986 c 266 s 23 are each amended to read as follows:

As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural or man-made, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person who is registered with a local emergency management organization or the department of community development and holds an identification card issued by the local emergency management director or the department of community development for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except section 2 of this act shall mean an event or set of circumstances which: ~~((a))~~ (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or ~~((b))~~ (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in section 2 of this act means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in section 2 of this act.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural or man-made disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor.

(9) "Director" means the director of community development.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the department of community development.

(12) "Emergency response" as used in section 2 of this act means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in section 2 of this act means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, fire fighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, or public authority located, in whole or in part, within this state which provides or may provide fire fighting, police, ambulance, medical, or other emergency services.

Passed the House April 19, 1993.

Passed the Senate April 12, 1993.

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Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 252

[Engrossed Substitute House Bill 1089]

### AIR QUALITY OPERATING PERMITS—FEES AND REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to fee structures of the air quality stationary source permit programs; amending RCW 70.94.015, 70.94.030, 70.94.151, 70.94.152, and 70.94.161; and adding new sections to chapter 70.94 RCW.

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

**Sec. 1.** RCW 70.94.015 and 1991 c 199 s 228 are each amended to read as follows:

(1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and section 8(7) of this act, and all receipts from RCW 70.94.650, 70.94.660, 82.44.020(3), and 82.50.405 shall be deposited into the account. Moneys in the

account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of ~~((this act and))~~ chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts ~~((paid to the department of revenue))~~ collected by or on behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, and sections 6 and 8(7) of this act shall be deposited into the account. Expenditures from the account may be used only for the ~~((direct and indirect costs of implementing the air operating permit program under))~~ activities described in RCW 70.94.152(1), 70.94.161, and sections 6 and 8(7) of this act. ~~((Only the director of the department of ecology or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no))~~ Moneys in the account may be spent only after appropriation ((is required for such expenditures)).

**Sec. 2.** RCW 70.94.030 and 1991 c 199 s 103 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such a pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on the effective date of this act, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it existed prior to enactment of the clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

(8) "Board" means the board of directors of an authority.

~~((7))~~ (9) "Control officer" means the air pollution control officer of any authority.

~~((8))~~ (10) "Department" or "ecology" means the department of ecology.

~~((9))~~ (11) "Emission" means a release of air contaminants into the ambient air.

~~((10))~~ (12) "Emission standard" ~~((means a limitation on the release of an air contaminant or multiple contaminants into the ambient air))~~ and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

~~((11))~~ (13) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(14) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(15) "Multicounty authority" means an authority which consists of two or more counties.

~~((12))~~ (16) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

(17) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70.94.161.

(18) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

~~((13))~~ (19) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

(20) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660.

(21) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control,



whose activities are ancillary to the production of a single product or functionally related group of products.

(22) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

**Sec. 3.** RCW 70.94.151 and 1987 c 109 s 37 are each amended to read as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The department or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration with any other board or the department.

All registration program fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

**Sec. 4.** RCW 70.94.152 and 1991 c 199 s 302 are each amended to read as follows:

(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the department from permit program sources shall be deposited in the air operating permit account. All new source fees collected by the delegated local air authorities from permit program sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account. All new source fees collected by local air authorities from nonpermit program sources shall be deposited in their respective treasuries.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

~~((2))~~ (4) The determination required under subsection ~~((4))~~ (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

~~((3))~~ (5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

~~((4))~~ (6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

~~((5))~~ (7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

~~((6))~~ (8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

~~((7))~~ (9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) Best available control technology (BACT) is required for new sources except where the federal clean air act requires compliance with the lowest achievable emission rate (LAER).

**Sec. 5.** RCW 70.94.161 and 1991 c 199 s 301 are each amended to read as follows:

The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) ~~(Unless a different meaning is plainly required by the context, the following words and phrases shall have the following meanings:~~

~~(a) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions which reflects:~~

~~(i) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or~~

~~(ii) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.~~

~~In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.~~

~~(b) "Best available control technology" (BACT) means technology that will result in an emission limitation, including a visible emission standard, based on the maximum degree of reduction for each air pollutant subject to this regulation that would be emitted from any proposed new or modified source that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant that would exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. If the reviewing agency determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirement of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results. The term "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.~~

~~(c) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.~~

~~(d) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control,~~

~~whose activities are ancillary to the production of a single product or functionally related group of products.~~

~~(e) "New source" means (i) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (ii) any other project that constitutes a new source under the federal clean air act.~~

~~(f) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.~~

~~(g) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.~~

~~(2))~~ Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection ~~((3))~~ (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

~~((3))~~ (2)(a) Rules establishing the elements for a state-wide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection; provided, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement

or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

~~((4)) "Best available control technology" (BACT) is required for new sources except where LAER is required.~~

~~Until July 1, 1993, "lowest achievable emission rate" (LAER) is required solely for those sources required by the federal clean air act. By December 1, 1992, the department shall recommend control technology requirements for new sources to the appropriate standing committees of the legislature.~~

~~Except as otherwise provided in RCW 70.94.331(9), "reasonably available control technology" (RACT) is required for existing sources.)~~

(3) In establishing technical standards, defined in ~~((subsection (2) of this section))~~ RCW 70.94.030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

~~((5))~~ (4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

~~((6))~~ (5) Sources operated by government agencies are not exempt under this section.

~~((7) By October 1, 1993, or ninety))~~ (6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, ~~((which ever is later, any))~~ a person required to have a permit shall submit to the permitting ~~((agency))~~ authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

~~((8))~~ (7) All ~~((proposed))~~ draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection ~~((3))~~ (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is

submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

~~((9))~~ (8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

~~((10))~~ (9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection ~~((3))~~ (2) of this section.

~~((11))~~ (10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder; ~~((and))~~

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70.98 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

~~((12))~~ (11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

~~((13) Permitted)~~ (12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a state-wide basis pursuant to RCW 70.94.395 shall be filed with the department. ~~((Permitted))~~ Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

~~((14))~~ (13) When issuing operating permits to coal fired electric generating plants, the permitting authority shall ~~((give consideration to the federal time lines~~

~~for the implementation of required control technology))~~ establish requirements consistent with Title IV of the federal clean air act.

~~((15))~~ (14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment ((of ten dollars per ton multiplied by the annual process-related emissions of each regulated pollutant emitted during calendar years 1990 and 1991. "Regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act amendments of 1990)) to fund the development of the operating permit program during fiscal year 1994.

~~(b) ((Fees collected under (a) of this subsection shall be distributed as follows: Eighty percent to the department and twenty percent to local air authorities.~~

~~(e))~~ The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

(i) The number of sources;

(ii) The complexity of sources; and

(iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under ((a) of) this subsection ((and any fees enacted under subsection (16) of this section)) shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

~~((16) On or before November 1, 1992, the department, in consultation with the department of revenue, shall report to the appropriate standing committees of the legislature recommendations on air operating permit fees. The department shall recommend a level of fees to cover the direct and indirect costs of implementing the operating permit program required under the 1990 federal clean air act. In making such recommendations, the department shall address:~~

~~(a) The costs of the permit program elements as identified in regulations promulgated by the United States environmental protection agency, including, as applicable:~~



- ~~(i) Oversight of a delegated local air authority;~~
- ~~(ii) Ambient air monitoring, modeling, and reporting;~~
- ~~(iii) Training;~~
- ~~(iv) Data management and quality assurance;~~
- ~~(v) Development of state implementation plans;~~
- ~~(vi) Emission inventories;~~
- ~~(vii) Technical assistance;~~
- ~~(viii) Rule making and guidelines; and~~
- ~~(ix) Any other activities, consistent with the federal clean air act, that may be identified by the department;~~
- ~~(b) The appropriate division of fees with delegated local air authorities; and~~
- ~~(c) A methodology for tracking revenues and expenditures from fees paid under this chapter.~~

~~(17))~~ (15) The department shall determine the persons liable for the fee imposed by subsection ~~((15))~~ (14) of this section, compute the fee, and provide by November 1 of ~~((1991 and 1992,))~~ 1993 the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers ~~((identified by))~~ under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

All fees identified in this section shall be due and payable on March 1 of ~~((1992 and 1993))~~ 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The 1993 amendments to RCW 70.94.161 contained in section 5 of this act do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as they existed prior to the effective date of this act.

~~((18))~~ (16) For sources or source categories not required to obtain permits under subsection ~~((5))~~ (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

~~((49))~~ (17) RCW 70.94.15 shall not apply to any permit program source ~~((for which a permit under this section has been issued))~~ after the effective date of United States environmental protection agency approval of the state operating permit program.

NEW SECTION. **Sec. 6.** A new section is added to chapter 70.94 RCW to read as follows:

(1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first be due not less than forty-five days after the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of state-wide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and

fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;

(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on the effective date of this act or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit program sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70.94.152(1) and section 8(7) of this act.

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(iv) On or before December 1, 1996, the department shall report to the appropriate standing committees of the legislature recommendations on the administrative feasibility and benefits of source-specific tracking of time and expenditures. The report may include findings from demonstration projects wherein time and expenditures are tracked on a source-specific basis.

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70.94.161(14), "regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act as it exists on the effective date of this act, or its later enactment as adopted by reference by the director by rule.

(9) The department shall report to the appropriate standing committees of the legislature by December 1, 1995, regarding the appropriateness of the fee structures authorized under this section for those sources not subject to permit program requirements as of the effective date of this act but which later become subject to such permit program requirements. In preparing the report, the department shall consult with representatives of such sources, local air authorities, environmental groups, and other interested parties. Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection.

**NEW SECTION.** Sec. 7. A new section is added to chapter 70.94 RCW to read as follows:

(1) The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7),

and 70.94.435 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council. However, the permits become effective only if the governor approves an application for certification and executes a certification agreement under chapter 80.50 RCW. The council shall have all powers necessary to administer an operating permits program pertaining to such facilities, consistent with applicable air quality standards established by the department or local air pollution control authorities, or both, and to obtain the approval of the United States environmental protection agency. The council's powers include, but are not limited to, all of the enforcement powers provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. To the extent not covered under RCW 80.50.071, the council may collect fees as granted to delegated local air authorities under RCW 70.94.152, 70.94.161 (14) and (15), and sections 6 and 8(7) of this act with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. The council and the department shall each establish procedures that provide maximum coordination and avoid duplication between the two agencies in carrying out the requirements of this chapter.

**NEW SECTION.** Sec. 8. A new section is added to chapter 70.94 RCW to read as follows:

(1) RACT as defined in RCW 70.94.030 is required for existing sources except as otherwise provided in RCW 70.94.331(9).

(2) RACT for each source category containing three or more sources shall be determined by rule except as provided in subsection (3) of this section.

(3) Source-specific RACT determinations may be performed under any of the following circumstances:

(a) As authorized by RCW 70.94.153;

(b) When required by the federal clean air act;

(c) For sources in source categories containing fewer than three sources;

(d) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(e) When a source-specific RACT determination is needed to address either specific air quality problems for which the source is a significant contributor or source-specific economic concerns.

(4) By January 1, 1994, ecology shall develop a list of sources and source categories requiring RACT review and a schedule for conducting that review. Ecology shall review the list and schedule within six months of receiving the initial operating permit applications and at least once every five years thereafter. In developing the list to determine the schedule of RACT review, ecology shall



consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection.

(5) In determining RACT, ecology and local authorities shall utilize the factors set forth in RCW 70.94.030 and shall consider RACT determinations and guidance made by the federal environmental protection agency, other states and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, ecology and local authorities shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

(6) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under subsections (2) and (3) of this section shall be incorporated into operating permits as provided in RCW 70.94.161 and rules implementing that section.

(7) The department and local air authorities are authorized to assess and collect a fee to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements. The fee shall apply to determinations of RACT requirements as defined under this section and RCW 70.94.331(9). The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category. The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of its RACT determinations and a methodology for tracking revenues and expenditures. All such RACT determination fees collected by the department from permit program sources shall be deposited in the air operating permit account. All such RACT determination fees collected by the delegated local air authorities from permit program sources shall be deposited in the dedicated accounts of their respective treasuries. All such RACT fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account. All such RACT fees collected by local air authorities from nonpermit program sources shall be deposited in their respective treasuries.

Passed the House April 19, 1993.  
Passed the Senate April 14, 1993.  
Approved by the Governor May 7, 1993.  
Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 253

[Substitute House Bill 1508]

### PRESCRIPTION DRUGS—APPROVAL BY INSURER MAY NOT BE WITHDRAWN

Effective Date: 5/7/93

AN ACT Relating to prescription claims insurance coverage; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; creating a new section; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. The legislature finds that many health care insurance entities are initially approving claims as eligible under an identified program, over the telephone, but denying those same claims when they are submitted for payment. The legislature finds this to be an untenable situation for the providers.

**NEW SECTION.** Sec. 2. A new section is added to chapter 48.20 RCW to read as follows:

Disability insurance companies who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim.

**NEW SECTION.** Sec. 3. A new section is added to chapter 48.21 RCW to read as follows:

Group disability insurance companies who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim.

**NEW SECTION.** Sec. 4. A new section is added to chapter 48.44 RCW to read as follows:

Health care service contractors who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the

preapproval that consists of identification by name and telephone number of the person who approved the claim.

**NEW SECTION. Sec. 5.** A new section is added to chapter 48.46 RCW to read as follows:

Health maintenance organizations who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim.

**NEW SECTION. Sec. 6.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 10, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 254

[Engrossed Substitute House Bill 1541]

### EMERGENCY MEDICAL TECHNICIANS—CONTINUING EDUCATION OR TRAINING REQUIRED

Effective Date: 7/25/93

AN ACT Relating to emergency medical services; and amending RCW 18.73.081.

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

**Sec. 1.** RCW 18.73.081 and 1990 c 269 s 24 are each amended to read as follows:

In addition to other duties prescribed by law, the secretary shall:

(1) Prescribe minimum requirements for:

- (a) Ambulance, air ambulance, and aid vehicles and equipment;
- (b) Ambulance and aid services; and
- (c) Minimum emergency communication equipment;

(2) Adopt procedures for services that fail to perform in accordance with minimum requirements;

(3) Prescribe minimum standards for first responder and emergency medical technician training including:

(a) Adoption of curriculum and period of certification;

(b) Procedures for certification, recertification, decertification, or modification of certificates(~~(: PROVIDED, That there shall be no practical examination for recertification if the applicant received a passing grade on the state written~~

~~examination and completed a program of ongoing training and evaluation, approved in rule by the county medical program director and the secretary));~~

(c) Adoption of requirements for ongoing training and evaluation, as approved by the county medical program director, to include appropriate evaluation for individual knowledge and skills. The first responder, emergency medical technician, or emergency medical services provider agency may elect a program of continuing education and a written and practical examination instead of meeting the ongoing training and evaluation requirements;

(d) Procedures for reciprocity with other states or national certifying agencies;

~~((d))~~ (e) Review and approval or disapproval of training programs; and

~~((e))~~ (f) Adoption of standards for numbers and qualifications of instructional personnel required for first responder and emergency medical technician training programs;

(4) Prescribe minimum requirements for liability insurance to be carried by licensed services except that this requirement shall not apply to public bodies; and

(5) Certify emergency medical program directors.

Passed the House April 24, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 255

[House Bill 1559]

### SCHOOL-AGED CHILD CARE PROGRAMS

Effective Date: 7/25/93

AN ACT Relating to school-aged child care programs; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that a large proportion of school-aged children in the state of Washington are not under the care and supervision of an adult before and after school and during school vacations while their parents work or are engaged in educational programs. As a result, the health, safety, and well-being of these children are at considerable risk during these hours. The legislature recognizes the need to encourage and facilitate the development of school-aged child care programs throughout the state for the benefit of the state's families. The legislature, therefore, intends to develop a plan for a state-wide system of school-aged child care programs.

NEW SECTION. Sec. 2. The child care coordinating committee established under RCW 74.13.090 shall develop a plan for a state-wide system of school-aged child care programs. The child care coordinating committee shall

ensure the involvement of school-aged child care providers, either public or private, or both, including those who are not current members of the child care coordinating committee, in the development of the plan. The plan must include, but is not limited to:

- (1) A statement of the current need for before-and-after school and school vacation care programs in this state;
- (2) Identification of the children that should be targeted for school-aged child care programs;
- (3) How local communities can involve parents and interested groups in identifying and addressing local needs for school-aged child care programs;
- (4) Standards for quality programming during the hours of operation of school-aged child care;
- (5) Recommendations for school-aged child care health and safety standards;
- (6) Recommendations for the administration of the programs, including transportation if recommendations include off-site care programs;
- (7) Recommendations regarding funding and parent-pay policies; and
- (8) Recommendations on the policy and role of the state in school-aged child care programs.

The child care coordinating committee shall submit its plan to the appropriate committees of the legislature by December 1, 1993.

Passed the House March 12, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 256

[House Bill 1645]

### INITIATIVE AND REFERENDUM PETITION SIGNATURES

Effective Date: 5/7/93

AN ACT Relating to initiatives and referenda; amending RCW 29.79.440, 29.79.480, 29.79.490, 42.17.090, 29.27.060, 29.79.040, 29.79.110, 29.27.065, 29.27.067, and 35A.29.120; adding new sections to chapter 29.79 RCW; repealing RCW 35.17.320; prescribing penalties; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 29.79 RCW to read as follows:

The legislature finds that paying a worker, whose task it is to secure the signatures of voters on initiative or referendum petitions, on the basis of the number of signatures the worker secures on the petitions encourages the introduction of fraud in the signature gathering process. Such a form of payment may act as an incentive for the worker to encourage a person to sign a petition which the person is not qualified to sign or to sign a petition for a ballot measure

even if the person has already signed a petition for the measure. Such payments also threaten the integrity of the initiative and referendum process by providing an incentive for misrepresenting the nature or effect of a ballot measure in securing petition signatures for the measure.

**Sec. 2.** RCW 29.79.440 and 1965 c 9 s 29.79.440 are each amended to read as follows:

Every person who signs an initiative or referendum petition with any other than his or her true name shall be guilty of a class C felony punishable under RCW 9A.20.021. Every person who knowingly signs more than one petition for the same initiative or referendum measure or who signs an initiative or referendum petition knowing that he or she is not a legal voter or who makes a false statement as to his or her residence on any initiative or referendum petition, shall be guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 3.** RCW 29.79.480 and 1965 c 9 s 29.79.480 are each amended to read as follows:

Every officer who willfully violates any of the provisions of this chapter or chapter 29.81 RCW, for the violation of which no penalty is herein prescribed, or who willfully fails to comply with the provisions of this chapter or chapter 29.81 RCW, shall be guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**Sec. 4.** RCW 29.79.490 and 1975-'76 2nd ex.s. c 112 s 2 are each amended to read as follows:

Every person shall be guilty of a gross misdemeanor who:

(1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or

~~(2) ((Advertises in any manner that for or without consideration, he will solicit or procure signatures upon or influence or attempt to influence persons to sign or not to sign, to vote or not to vote upon an initiative or referendum petition, or to vote for or against any initiative or referendum; or~~

~~(3) For any consideration or gratuity or promise thereof solicits or procures signatures upon an initiative or referendum petition))~~ Provides or receives consideration for soliciting or procuring signatures on an initiative or referendum petition if any part of the consideration is based upon the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

~~((4))~~ (3) Gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign ~~((, or to solicit or procure signatures upon an initiative or referendum petition,))~~ or to vote for or against any initiative or referendum measure; or

~~((5))~~ (4) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote

for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

~~((6))~~ (5) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure: PROVIDED, That this subsection shall not apply to or prohibit any activity which is properly reported in accordance with the applicable provisions of chapter 42.17 RCW.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

NEW SECTION. Sec. 5. A new section is added to chapter 29.79 RCW to read as follows:

The word "warning" and the warning statement regarding signing petitions that must appear on petitions as prescribed by RCW 29.79.090, 29.79.100, and 29.79.110 shall be printed on each petition sheet such that they occupy not less than four square inches of the front of the petition sheet.

Sec. 6. RCW 42.17.090 and 1989 c 280 s 9 are each amended to read as follows:

(1) Each report required under RCW 42.17.080 (1) and (2) shall disclose the following:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign or in the case of a continuing political committee, the current calendar year: PROVIDED, That pledges in the aggregate of less than one hundred dollars from any one person need not be reported: PROVIDED FURTHER, That the income which results from a fund-raising activity conducted in accordance with RCW 42.17.067 may be reported as one lump sum, with the exception of that portion of such income which was received from persons whose names and addresses are required to be included in the report required by RCW 42.17.067: PROVIDED FURTHER, That contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the name, address, and amount of each such contributor: PROVIDED FURTHER, That the money value of contributions of postage shall be the face value of such postage;

(c) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together

with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(d) All other contributions not otherwise listed or exempted;

(e) The name and address of each candidate or political committee to which any transfer of funds was made, together with the amounts and dates of such transfers;

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, and the amount, date, and purpose of each such expenditure. A candidate for state executive or state legislative office or the political committee of such a candidate shall report this information for an expenditure under one of the following categories, whichever is appropriate: (i) Expenditures for the election of the candidate; (ii) expenditures for nonreimbursed public office-related expenses; (iii) expenditures required to be reported under (e) of this subsection; or (iv) expenditures of surplus funds and other expenditures. The report of such a candidate or committee shall contain a separate total of expenditures for each category and a total sum of all expenditures. Other candidates and political committees need not report information regarding expenditures under the categories listed in (i) through (iv) of this subsection or under similar such categories unless required to do so by the commission by rule. The report of such an other candidate or committee shall also contain the total sum of all expenditures;

(g) The name and address of each person to whom any expenditure was made directly or indirectly to compensate the person for soliciting or procuring signatures on an initiative or referendum petition, the amount of such compensation to each such person, and the total of the expenditures made for this purpose. Such expenditures shall be reported under this subsection (1)(g) whether the expenditures are or are not also required to be reported under (f) of this subsection;

(h) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

~~((+))~~ (i) The surplus or deficit of contributions over expenditures;

~~((+))~~ (j) The disposition made in accordance with RCW 42.17.095 of any surplus funds;

~~((+))~~ (k) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter; and

~~((+))~~ (l) Funds received from a political committee not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee has filed or within ten days following such receipt files with the commission a statement disclosing: (i) its name and address; (ii) the purposes of the nonreporting



committee; (iii) the names, addresses, and titles of its officers or if it has no officers, the names, addresses, and titles of its responsible leaders; (iv) the name, office sought, and party affiliation of each candidate in the state of Washington whom the nonreporting committee is supporting, and, if such committee is supporting the entire ticket of any party, the name of the party; (v) the ballot proposition supported or opposed in the state of Washington, if any, and whether such committee is in favor of or opposed to such proposition; (vi) the name and address of each person residing in the state of Washington or corporation which has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars to the nonreporting committee during the current calendar year, together with the money value and date of such contributions; (vii) the name and address of each person in the state of Washington to whom an expenditure was made by the nonreporting committee on behalf of a candidate or political committee in the aggregate amount of more than fifty dollars, the amount, date, and purpose of such expenditure, and the total sum of such expenditures; (viii) such other information as the commission may prescribe by rule, in keeping with the policies and purposes of this chapter. A nonreporting committee incurring an obligation to file additional reports in a calendar year may satisfy the obligation by filing with the commission a letter providing updating or amending information.

(2) The treasurer and the candidate shall certify the correctness of each report.

NEW SECTION. Sec. 7. A new section is added to chapter 29.79 RCW to read as follows:

(1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of the state legislature or of the legislative authority of a unit of local government shall be composed of three elements: (a) An identification of the enacting legislative body; (b) a concise statement identifying the essential features of the enactment on which the referendum is filed; and (c) a question asking the voters whether the enactment should be approved or rejected by the people. The ballot issue shall be displayed on the ballot substantially as follows:

Referendum Measure No. XX. The (name of legislative body) has passed a law that (concise statement). Should this law be

APPROVED . . . . .  
OR  
REJECTED . . . . .

(2) For a referendum measure on a state enactment, the concise statement shall be prepared by the attorney general and shall not exceed twenty-five words.

(3) The concise statement for a referendum measure on an enactment of the legislative authority of a unit of local government shall not exceed seventy-five

words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(4) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

**Sec. 8.** RCW 29.27.060 and 1985 c 252 s 1 are each amended to read as follows:

(1) When a proposed constitution or constitutional amendment or other question is to be submitted to the people of the state for state-wide popular vote, the attorney general shall prepare a concise statement posed as a question and not exceeding twenty words containing the essential features thereof expressed in such a manner as to clearly identify the proposition to be voted upon.

Questions to be submitted to the people of a county or municipality shall also be advertised as provided for nominees for office, and in such cases there shall also be printed on the ballot a concise statement posed as a question and not exceeding seventy-five words containing the essential features thereof expressed in such a manner as to clearly identify the proposition to be voted upon, which statement shall be prepared by the city or town attorney for the city or town, and by the prosecuting attorney for the county or any other (~~political subdivision of the state~~) unit of local government, other than (~~cities~~) a city or town, the majority area of which is situated in the county.

The concise statement constitutes the ballot title.

(2) The secretary of state shall certify to the county auditors the ballot title for a proposed constitution, constitutional amendment or other state-wide question at the same time and in the same manner as the ballot titles to initiatives and referendums.

(3) Subsection (1) of this section does not apply to referendum measures filed on an enactment of the state legislature or on an enactment of the legislative authority of a unit of local government, nor does it apply to the extent that other provisions of state law provide otherwise for a specific type of ballot question or proposition.

**Sec. 9.** RCW 29.79.040 and 1982 c 116 s 4 are each amended to read as follows:

Within seven calendar days after the receipt of an initiative or referendum measure the attorney general shall formulate and transmit to the secretary of state ~~((a))~~ the concise statement ~~((posed as a question and not to exceed twenty words,))~~ required by RCW 29.27.060 or section 7 of this act bearing the serial number of the measure and a summary of the measure, not to exceed seventy-five words, to follow the statement. The statement may be distinct from the legislative title of the measure, and shall give a true and impartial statement of

the purpose of the measure. Neither the statement nor the summary may intentionally be an argument, nor likely to create prejudice, either for or against the measure. Except as provided for in section 7 of this act, such a concise statement shall constitute the ballot title. The ballot title or, for a referendum on a state enactment, the concise statement formulated by the attorney general shall be the ballot title of or concise statement describing the measure unless changed on appeal. When practicable, the question posed by the ballot title shall be written in such a way that an affirmative answer to such question and an affirmative vote on the measure would result in a change in then current law, and a negative answer to the question and a negative vote on the measure would result in no change to then current law.

**Sec. 10.** RCW 29.79.110 and 1982 c 116 s 11 are each amended to read as follows:

Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, shall be substantially in the following form:

**WARNING**

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.

**PETITION FOR REFERENDUM**

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No. . . . ., (~~entitled (here insert the established ballot title of the measure) being~~) filed to revoke a (or part or parts of a) bill that (concise statement required by section 7 of this act) and that was passed by the . . . . . legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the . . . day of November, 19. . .; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
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(Here follow 20 numbered lines divided into columns as below.)

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1-----	-----	-----	-----	-----
2-----	-----	-----	-----	-----
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etc.				

Sec. 11. RCW 29.27.065 and 1965 c 9 s 29.27.065 are each amended to read as follows:

Upon the filing of a ballot title as defined in RCW 29.27.060 or a concise statement as required under section 7 of this act, the secretary of state, in the event it is a state question, or the county auditor in the event it is a county or other local question, shall forthwith notify the persons proposing the measure of the exact language of the ballot title.

Sec. 12. RCW 29.27.067 and 1965 c 9 s 29.27.067 are each amended to read as follows:

If the persons filing any state or local question covered by RCW 29.27.060 or section 7 of this act are dissatisfied with the ballot title or concise statement formulated by the attorney general, city attorney, or prosecuting attorney preparing the same, they may at any time within ten days from the time of the filing of the ballot title or statement appeal to the superior court of Thurston county if it is a state-wide question, or to the superior court of the county where the question is to appear on the ballot, if it is a county or local question, by petition setting forth the measure, the ballot title or statement objected to, their objections to ~~((the ballot title))~~ it and praying for amendment thereof. The time of the filing of the ballot title or statement, as used herein in determining the time for appeal, is the time the ballot title or statement is first filed with the secretary of state, if concerning a state-wide question, or the county auditor, if a local question, the secretary of state or the county officer being herein called the "filing officer."

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the filing officer and the official preparing the ballot title or statement. Upon the filing of the petition on appeal, the court shall forthwith, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title or concise statement filed and the objections thereto and may hear arguments thereon, and shall as soon as possible render its decision and certify to and file with the filing officer such ballot title or statement as it determines will meet the requirements of this chapter. The decision of the superior court shall be final, and the title or statement so certified shall be the established ballot title or concise statement. Such appeal shall be heard without cost to either party.

Sec. 13. RCW 35A.29.120 and 1979 ex.s. c 18 s 31 are each amended to read as follows:

When any question is to be submitted to the voters of a code city, or when a proposition is to be submitted to the voters of an area under provisions of this

title, the question or proposition shall be advertised as provided for nominees for office, and in such cases there shall also be printed on the ballot a (~~concise statement~~) ballot title for the question or proposition in the form (~~of a question and as otherwise provided in~~) applicable under section 7 of this act, RCW 29.27.060, (~~which statement~~) 82.14.036, 82.46.021, or 82.80.090 or as otherwise expressly required by state law. The ballot title shall be prepared by the attorney for the code city, or (~~by the prosecuting attorney for the county~~) as specified in RCW 29.27.060 for elections held outside of a code city. (~~The concise statement shall constitute the ballot title.~~)

NEW SECTION. Sec. 14. RCW 35.17.320 and 1965 c 7 s 35.17.320 are each repealed.

NEW SECTION. Sec. 15. 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. 16. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 14, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 257

[House Bill 1751]

### FOREST PRACTICES BOARD MEMBERS—COMPENSATION OF

Effective Date: 7/25/93

AN ACT Relating to the compensation of the forest practices board; and amending RCW 76.09.030.

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

**Sec. 1.** RCW 76.09.030 and 1987 c 330 s 1301 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

- (a) The commissioner of public lands or his designee;
- (b) The director of the department of trade and economic development or his designee;
- (c) The director of the department of agriculture or his designee;
- (d) The director of the department of ecology or his designee;
- (e) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on his continued service as an elected county official; and

(f) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his successor is appointed and qualified. The commissioner of public lands or his designee shall be the chairman of the board.

(3) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW (~~(43.03.240)~~) 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

Passed the House March 15, 1993.

Passed the Senate April 18, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 258

[House Bill 1769]

### RECREATIONAL TRAILS—DUTIES OF INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION

Effective Date: 7/25/93

AN ACT Relating to recreational trails; and amending RCW 67.32.110.

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

**Sec. 1.** RCW 67.32.110 and 1970 ex.s. c 76 s 11 are each amended to read as follows:

The IAC is authorized and encouraged to consult and to cooperate with any state, federal or local governmental agency or body including special districts subject to the provisions of chapter 85.38 RCW, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment or disposition of roadways, utility rights-of-way, dikes or levees, or other properties suitable for the purpose of improving

or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use.

Passed the House March 11, 1993.

Passed the Senate April 18, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 259

[Substitute House Bill 1802]

### MARRIAGE AND FAMILY THERAPIST CERTIFICATION REQUIREMENTS REVISED

Effective Date: 7/25/93

AN ACT Relating to certification of marriage and family therapists; and amending RCW 18.19.130.

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

**Sec. 1.** RCW 18.19.130 and 1991 c 3 s 28 are each amended to read as follows:

(1) The department shall issue a certified marriage and family therapist certificate to any applicant meeting the following requirements:

(a) ~~((+))~~ A master's or doctoral degree in marriage and family therapy ~~((or its equivalent from an approved school that shows evidence of the following course work: (A) Marriage and family systems, (B) marriage and family therapy, (C) individual development, (D) assessment of psychopathology, (E) human sexuality, (F) research methods, (G) professional ethics and laws, and (H) a minimum of one year in the practice of marriage and family therapy under the supervision of a qualified marriage and family therapist;~~

~~(ii) Two years of postgraduate practice of marriage and family therapy under the supervision of a qualified marriage and family therapist; and~~

~~(iii) Passing scores on both written and oral examinations administered by the department for marriage and family therapists; or~~

~~(b) In the alternative, an applicant completing a master's or doctoral degree program in marriage and family therapy or its equivalent from an approved graduate school before or within eighteen months of July 26, 1987, may qualify for the examination)), or a behavioral science master's or doctoral degree and the program equivalency as determined by rule by the department based on nationally recognized standards;~~

(b)(i) After receiving a master's or doctoral degree in marriage and family therapy, two years of postgraduate practice of marriage and family therapy, under the supervision of a qualified marriage and family therapy supervisor;

(ii) After receiving a master's or doctoral degree in a behavioral science, two years of postgraduate practice in marriage and family therapy under

supervision of a qualified marriage and family supervisor, which may be accumulated concurrently with completion of the program equivalency as adopted by the department by rule; and

(c) A passing score on a written examination that includes a section on Washington's statutes and rules, including provisions of the uniform disciplinary act, approved by the department for certified marriage and family therapists.

~~(2) ((Except as provided in RCW 18.19.160, an applicant is exempt from the examination provisions of this section under the following conditions if application for exemption is made within twelve months after July 26, 1987:~~

~~(a) The applicant shall establish to the satisfaction of the secretary that he or she has been engaged in the practice of marriage and family therapy as defined in this chapter for two of the previous four years; and~~

~~(b) The applicant has the following academic qualifications: (i) A doctorate or master's degree in marriage and family therapy or its equivalent from an approved graduate school; and (ii) two years of postgraduate experience under the supervision of a marriage and family therapist who qualifies for certification under this chapter or under the supervision of any other professional deemed appropriate by the secretary.~~

~~(3)) The practice of marriage and family therapy is that aspect of counseling that involves ((the assessment and treatment of impaired marriage or family relationships including, but not limited to, premarital and postdivorce relationships and the enhancement of marital and family relationships via use of educational, sociological, and psychotherapeutic theories and techniques)) the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise. "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such disorders.~~

Passed the House April 20, 1993.

Passed the Senate April 17, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.



**CHAPTER 260**

[Substitute House Bill 1870]

**BAIL BOND AGENT LICENSING REQUIREMENTS****Effective Date:** 7/1/93

AN ACT Relating to bail bond agents; adding a new chapter to Title 18 RCW; creating a new section; prescribing penalties; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature declares that the licensing of bail bond agents should be uniform throughout the state. Therefore, it is the intent of the legislature to preempt any local regulation of bail bond agents, including licensing fees, but not including local business license fees. Nothing in this chapter limits the discretion of the courts of this state to accept or reject a particular surety or recognizance bond in a particular case.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Collateral or security" means property of any kind given as security to obtain a bail bond.

(4) "Bail bond agency" means a business that sells and issues corporate surety bail bonds or that provides security in the form of personal or real property to insure the appearance of a criminal defendant before the courts of this state or the United States.

(5) "Qualified agent" means an owner, sole proprietor, partner, manager, officer, or chief operating officer of a corporation who meets the requirements set forth in this chapter for obtaining a bail bond agency license.

(6) "Bail bond agent" means a person who is employed by a bail bond agency and engages in the sale or issuance of bail bonds, but does not mean a clerical, secretarial, or other support person who does not participate in the sale or issuance of bail bonds.

(7) "Licensee" means a bail bond agency or a bail bond agent or both.

**NEW SECTION. Sec. 3.** An applicant must meet the following minimum requirements to obtain a bail bond agent license:

(1) Be at least eighteen years of age;

(2) Be a citizen or resident alien of the United States;

(3) Not have been convicted of a crime in any jurisdiction in the preceding ten years, if the director determines that the applicant's particular crime directly relates to a capacity to perform the duties of a bail bond agent and the director determines that the license should be withheld to protect the citizens of Washington state. If the director shall make a determination to withhold a license because of previous convictions, the determination shall be consistent with the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by a bail bond agency or be licensed as a bail bond agency; and

(5) Pay the required fee.

**NEW SECTION.** Sec. 4. (1) In addition to meeting the minimum requirements to obtain a license as a bail bond agent, a qualified agent must meet the following additional requirements to obtain a bail bond agency license:

(a) Pass an examination determined by the director to measure the person's knowledge and competence in the bail bond agency business; or

(b) Have had at least three years' experience as a manager, supervisor, or administrator in the bail bond business or a related field as determined by the director. A year's experience means not less than two thousand hours of actual compensated work performed before the filing of an application. An applicant shall substantiate the experience by written certifications from previous employers. If the applicant is unable to supply written certifications from previous employers, applicants may offer written certifications from persons other than employers who, based on personal knowledge, can substantiate the employment; and

(c) Pay any additional fees as established by the director.

(2) An agency license issued under this section may not be assigned or transferred without prior written approval of the director.

**NEW SECTION.** Sec. 5. (1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria, which may include fingerprints.

(2) After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth in the application are true.

**NEW SECTION.** Sec. 6. (1) The director shall issue a bail bond agent license card to each licensed bail bond agent. A bail bond agent shall carry the license card whenever he or she is performing the duties of a bail bond agent and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed bail bond agency.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director.

**NEW SECTION. Sec. 7.** (1) The director shall adopt rules establishing prelicensing training and testing requirements, which shall include a minimum of four hours of classes. The director may establish, by rule, continuing education requirements for bail bond agents.

(2) The director shall consult with the bail bond industry before adopting or amending the prelicensing training or continuing education requirements of this section.

(3) The director may appoint an advisory committee consisting of representatives from the bail bond industry and a consumer to assist in the development of rules to implement this chapter.

(4) A bail bond agent need not fulfill the prelicensing training requirements of this chapter if he or she, within sixty days prior to July 1, 1994, provides proof to the director that he or she previously has met the training requirements of this chapter or has been employed as a bail bond agent for at least eighteen consecutive months immediately prior to the date of application.

**NEW SECTION. Sec. 8.** (1) No bail bond agency license may be issued under the provisions of this chapter unless the qualified agent files with the director a bond, executed by a surety company authorized to do business in this state, in the sum of ten thousand dollars conditioned to recover against the agency and its servants, officers, agents, and employees by reason of its violation of the provisions of section 11 of this act. The bond shall be made payable to the state of Washington, and anyone so injured by the agency or its servants, officers, agents, or employees may bring suit upon the bond in any county in which jurisdiction over the licensee may be obtained. The suit must be brought not later than two years after the failure to return property in accordance with section 11 of this act. If valid claims against the bond exceed the amount of the bond or deposit, each claimant shall be entitled only to a pro rata amount, based on the amount of the claim as it is valid against the bond, without regard to the date of filing of any claim or action.

(2) Every licensed bail bond agency must at all times maintain on file with the director the bond required by this section in full force and effect. Upon failure by a licensee to do so, the director shall suspend the licensee's license and shall not reinstate the license until this requirement is met.

(3) In lieu of posting a bond, a qualified agent may deposit in an interest-bearing account, ten thousand dollars.

(4) The director may waive the bond requirements of this section, in his or her discretion, pursuant to adopted rules.

**NEW SECTION. Sec. 9.** (1) The provisions of this chapter relating to the licensing for regulatory purposes of bail bond agents and bail bond agencies are exclusive. No governmental subdivision of this state may enact any laws or

rules licensing for regulatory purposes such persons, except as provided in subsections (2) and (3) of this section.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business fee, business and occupation tax, or other tax upon bail bond agencies if such fees or taxes are levied by the political subdivision on other types of businesses within its boundaries.

(3) This section shall not be construed to prevent this state or a political subdivision of this state from licensing for regulatory purposes bail bond agencies with respect to activities that are not regulated under this chapter.

**NEW SECTION.** Sec. 10. (1) A bail bond agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed bail bond agent.

(2) A bail bond agency shall notify the director within seventy-two hours upon receipt of information affecting a licensed bail bond agent's continuing eligibility to hold a license under the provisions of this chapter.

**NEW SECTION.** Sec. 11. (1) Every qualified agent shall keep adequate records for three years of all collateral and security received, all trust accounts required by this section, and all bail bond transactions handled by the bail bond agency, as specified by rule. The records shall be open to inspection without notice by the director or authorized representatives of the director.

(2) Every qualified agent who receives collateral or security is a fiduciary of the property and shall keep adequate records for three years of the receipt, safekeeping, and disposition of the collateral or security. Every qualified agent shall maintain a trust account in a federally insured financial institution located in this state. All moneys, including cash, checks, money orders, wire transfers, and credit card sales drafts, received as collateral or security or otherwise held for a bail bond agency's client shall be deposited in the trust account not later than the third banking day following receipt of the funds or money. A qualified agent shall not in any way encumber the corpus of the trust account or commingle any other moneys with moneys properly maintained in the trust account. Each qualified agent required to maintain a trust account shall report annually under oath to the director the account number and balance of the trust account, and the name and address of the institution that holds the trust account, and shall report to the director within ten business days whenever the trust account is changed or relocated or a new trust account is opened.

(3) Whenever a bail bond is exonerated by the court, the bail bond agency shall, within five business days after written notification of exoneration and upon demand, return all collateral or security to the person entitled thereto.

**NEW SECTION.** Sec. 12. The following acts are prohibited and constitute grounds for disciplinary action or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:

(1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Knowingly making a material misstatement or omission in the application for or renewal of a license;

(3) Failing to meet the qualifications set forth in sections 3 and 4 of this act;

(4) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(5) Advertising that is false, fraudulent, or misleading;

(6) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(7) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(8) Failure to cooperate with the director by not:

(a) Furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

(b) Furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(9) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(10) Aiding or abetting an unlicensed person to practice if a license is required;

(11) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation, or conduct of the licensee;

(12) Failure to adequately supervise employees to the extent that the client funds are at risk;

(13) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against any client or

witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(14) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in section 4 of this act;

(15) Conversion of any money or contract, deed, note, mortgage, or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, or other evidence of title within thirty days after the owner is entitled to possession, and makes demand for possession, shall be prima facie evidence of conversion;

(16) Failing to keep records, maintain a trust account, or return collateral or security, as required by section 11 of this act;

(17) Any conduct in a bail bond transaction which demonstrates bad faith, dishonesty, or untrustworthiness; or

(18) Violation of an order to cease and desist that is issued by the director under this chapter.

**NEW SECTION. Sec. 13.** The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To issue an order providing for one or any combination of the following upon violation or violations of this chapter: Denying, suspending, or revoking a license; assessing monetary penalties; restricting or limiting practice; complying with conditions of probation for a designated period of time; making restitution to the person harmed by the licensee; or other corrective action;

(3) To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(4) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(5) To compel attendance of witnesses at hearings;

(6) To establish fees by rule under RCW 43.24.086 and chapter 34.05 RCW;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(9) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(10) To adopt standards of professional conduct or practice;

(11) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against an applicant or license holder as provided by this chapter;

(12) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(13) To designate individuals authorized to sign subpoenas and statements of charges; and

(14) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter.

**NEW SECTION.** Sec. 14. Any person may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the director shall investigate to determine if there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint.

**NEW SECTION.** Sec. 15. (1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and notice of this action given to the owner or qualified agent of the employing bail bond agency. The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order under RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing.

**NEW SECTION.** Sec. 16. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, shall govern all hearings before the director.

**NEW SECTION.** Sec. 17. If an order for payment of a monetary penalty is made as a result of a hearing and timely payment is not made as directed in

the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to a licensee ordered to pay a monetary penalty but shall not be construed to limit a licensee's ability to seek judicial review.

In an action for enforcement of an order of payment of a monetary penalty, the director's order is conclusive proof of the validity of the order of payment of a penalty and the terms of payment.

**NEW SECTION.** **Sec. 18.** (1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director has the same authority as provided the director under section 15 of this act. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders.

(2) The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by this chapter without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) After June 30, 1994, any person who performs the functions and duties of a bail bond agent in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(4) After January 1, 1994, a person is guilty of a gross misdemeanor if he or she owns or operates a bail bond agency in this state without first obtaining a bail bond agency license.



(5) After June 30, 1994, the owner or qualified agent of a bail bond agency is guilty of a gross misdemeanor if he or she employs any person to perform the duties of a bail bond agent without the employee having in his or her possession a permanent bail bond agent license issued by the department.

(6) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the department.

**NEW SECTION.** Sec. 19. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction.

**NEW SECTION.** Sec. 20. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

**NEW SECTION.** Sec. 21. The director, in implementing and administering the provisions of this chapter, shall act in accordance with the administrative procedure act, chapter 34.05 RCW.

**NEW SECTION.** Sec. 22. Failure to fulfill the fiduciary duties and other duties as prescribed in section 11 of this act is not reasonable in relation to the development and preservation of business. A violation of section 11 of this act is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW.

**NEW SECTION.** Sec. 23. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 24. The director of licensing may take such steps as are necessary to ensure that this act is implemented on its effective date.

**NEW SECTION.** Sec. 25. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

**NEW SECTION.** Sec. 26. Sections 1 through 23 of this act shall constitute a new chapter in Title 18 RCW.

Passed the House March 21, 1993.

Passed the Senate April 14, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 261

[Substitute House Bill 1948]

## HISPANIC AFFAIRS COMMISSION—REVISED PROVISIONS RELATING TO

Effective Date: 7/25/93

AN ACT Relating to the state commission on Hispanic affairs; amending RCW 43.115.010, 43.115.030, 43.115.040, 43.131.341, and 43.131.342; adding a new section to chapter 43.115 RCW; and repealing RCW 43.115.050.

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

**Sec. 1.** RCW 43.115.010 and 1987 c 249 s 1 are each amended to read as follows:

The legislature declares that the public policy of this state is to insure equal opportunity for all of its citizens. ~~((The legislature finds that Hispanics have unique and special problems. It is the purpose of this chapter to improve the well-being of Hispanics by insuring their participation in the fields of government, business, and education. The legislature further finds that it is necessary to aid Hispanics in obtaining governmental services in order to promote the health, safety and welfare of all the residents of this state.))~~ The legislature believes that it is the duty of the state to improve the well-being of Hispanics by enabling them to participate fully in all fields of endeavor and assisting them in obtaining governmental services. The legislature further finds that the development of public policy and the delivery of governmental services to meet the special needs of Hispanics can be improved by establishing a focal point in state government for the interests of Hispanics. Therefore the legislature deems it necessary to create a commission to carry out the purposes of this chapter.

**Sec. 2.** RCW 43.115.030 and 1987 c 249 s 3 are each amended to read as follows:

(1) The commission shall consist of eleven members of Hispanic origin appointed by the governor. ~~((The membership shall include:~~

~~(a) Two members from workers in the agricultural field;~~

~~(b) Three members from the general populace of Hispanics, but not of Mexican-American origin;~~

~~(c) One member from the field of education;~~

~~(d) One member who is a professional from the business community, government employment, or public service;~~

~~(e) One member from among elected trade union officials; and~~

~~(f) Three members from the Mexican-American community in the state.~~

~~(2) Members shall serve for four year terms and until their successors are chosen and qualified.))~~ To the extent practicable, appointments to the commission shall be made to achieve a balanced representation based on the Hispanic population distribution within the state, geographic considerations, sex, age, and occupation. Members shall serve three-year terms. No member shall serve more than two full consecutive terms. Vacancies shall be filled in the same manner as the original appointments.

~~((3))~~ (2) Members shall receive reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

~~((4))~~ (3) Six members of the commission shall constitute a quorum for the purpose of conducting business.

**Sec. 3.** RCW 43.115.040 and 1987 c 249 s 4 are each amended to read as follows:

The commission shall have the following powers and duties:

(1) Elect one of its members to serve as chairman;

(2) ~~((Appoint a full-time director;~~

~~(3) Appoint a staff who shall be state employees pursuant to Title 41 RCW;~~  
and

~~(4))~~ Adopt rules and regulations pursuant to chapter 34.05 RCW;

(3) Examine and define issues pertaining to the rights and needs of Hispanics, and make recommendations to the governor and state agencies for changes in programs and laws;

(4) Advise the governor and state agencies on the development and implementation of policies, plans, and programs that relate to the special needs of Hispanics;

(5) Advise the legislature on issues of concern to the Hispanic community;

(6) Establish relationships with state agencies, local governments, and private sector organizations that promote equal opportunity and benefits for Hispanics; and

(7) Receive gifts, grants, and endowments from public or private sources that are made for the use or benefit of the commission and expend, without appropriation, the same or any income from the gifts, grants, or endowments according to their terms.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 43.115 RCW to read as follows:

(1) The commission shall be administered by an executive director, who shall be appointed by and serve at the pleasure of the governor. The governor shall base the appointment of the executive director on recommendations of the commission. The salary of the executive director shall be set by the governor.

(2) The executive director shall employ a staff, who shall be state employees pursuant to Title 41 RCW. The executive director shall prescribe the duties of the staff as may be necessary to implement the purposes of this chapter.

**Sec. 5.** RCW 43.131.341 and 1987 c 249 s 8 are each amended to read as follows:

The Washington state commission on Hispanic affairs and its powers and duties shall be terminated on June 30, ~~((1996))~~ 2021, as provided in RCW 43.131.342.

**Sec. 6.** RCW 43.131.342 and 1987 c 249 s 9 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, ~~((1997))~~ 2022:

(1) Section 1, chapter 34, Laws of 1971 ex. sess., section 1, chapter 249, Laws of 1987, section 1, chapter . . . , Laws of 1993 (section 1 of this act) and RCW 43.115.010;

(2) Section 2, chapter 34, Laws of 1971 ex. sess., section 2, chapter 249, Laws of 1987 and RCW 43.115.020;

(3) Section 3, chapter 34, Laws of 1971 ex. sess., section 130, chapter 34, Laws of 1975-'76 2nd ex. sess., section 15, chapter 338, Laws of 1981, section 3, chapter 249, Laws of 1987, section 2, chapter . . . , Laws of 1993, (section 2 of this act) and RCW 43.115.030;

(4) Section 4, chapter 34, Laws of 1971 ex. sess., section 4, chapter 249, Laws of 1987, section 3, chapter . . . , Laws of 1993 (section 3 of this act) and RCW 43.115.040;

~~(5) ((Section 5, chapter 34, Laws of 1971 ex. sess., section 5, chapter 249, Laws of 1987 and RCW 43.115.050;~~

~~(6))~~ Section 6, chapter 34, Laws of 1971 ex. sess., section 6, chapter 249, Laws of 1987 and RCW 43.115.060; ~~((and~~

~~(7))~~ (6) Section 7, chapter 34, Laws of 1971 ex. sess. and RCW 43.115.900; and

(7) Section 4 of this act.

NEW SECTION. Sec. 7. RCW 43.115.050 and 1987 c 249 s 5 & 1971 ex.s. c 34 s 5 are each repealed.

Passed the House April 20, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 262

[House Bill 1911]

### FIRE PROTECTION DISTRICT ANNEXATION OF NEWLY INCORPORATED CITY OR TOWN Effective Date: 7/25/93

AN ACT Relating to the location of fire protection districts in newly incorporated cities and towns; amending RCW 52.08.025, 35.02.190, and 35.02.205; and adding a new section to chapter 52.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 52.04 RCW to read as follows:

If the area of a newly incorporated city or town is located in one or more fire protection districts, the city or town is deemed to have been annexed by the fire protection district or districts effective immediately on the city's or town's

official date of incorporation, unless the city or town council adopts a resolution during the interim transition period precluding the annexation of the newly incorporated city or town by the fire protection district or districts. The newly incorporated city or town shall remain annexed to the fire protection district or districts for the remainder of the year of the city's or town's official date of incorporation, or through the following year if such extension is approved by resolution adopted by the city or town council and by the board or boards of fire commissioners, and shall be withdrawn from the fire protection district or districts at the end of this period, unless a ballot proposition is adopted by the voters pursuant to RCW 52.04.071 providing for annexation of the city or town to a fire protection district.

If the city or town is withdrawn from the fire protection district or districts, the maximum rate of the first property tax levy that is imposed by the city or town after the withdrawal is calculated as if the city or town never had been annexed by the fire protection district or districts.

**Sec. 2.** RCW 52.08.025 and 1986 c 234 s 35 are each amended to read as follows:

Effective January 1, 1960, every city or town, or portion thereof, which is situated within the boundaries of a fire protection district shall become automatically removed from such fire protection district, and no fire protection district shall thereafter include any city or town, or portion thereof, within its boundaries except as provided for in RCW 52.02.020, 52.04.061, 52.04.071, 52.04.081, ~~((and))~~ 52.04.101, and section 1 of this act.

However, if the area which incorporates or is annexed includes all of a fire protection district, the fire protection district, for purposes of imposing regular property taxes, shall continue in existence: (1)(a) Until the first day of January in the year in which the initial property tax collections of the newly incorporated city or town will be made, if a resolution is adopted under section 1 of this act precluding annexation of the city or town to the district; (b) until the city or town is withdrawn from the fire protection district, if no such resolution is adopted and no ballot proposition under section 1 of this act is approved; or (c) indefinitely, if such a ballot proposition is approved; or (2) until the first day of January in the year the annexing city or town will collect its property taxes imposed on the newly annexed area. The members of the city or town council or commission shall act as the board of commissioners to impose, receive, and expend these property taxes.

**Sec. 3.** RCW 35.02.190 and 1989 c 76 s 2 are each amended to read as follows:

If a portion of a fire protection district including at least sixty percent of the assessed valuation of the real property of the district is annexed to or incorporated into a city or town, ownership of all of the assets of the district shall be vested in the city or town, or, if the city or town has been annexed by another fire protection district, in the other fire protection district, upon payment in cash,

properties or contracts for fire protection services to the district within one year of the date on which the city or town withdraws from the fire protection district pursuant to section 1 of this act, of a percentage of the value of said assets equal to the percentage of the value of the real property in entire district remaining outside the incorporated or annexed area. The fire protection district may elect, by a vote of a majority of the persons residing outside the annexed or incorporated area who vote on the proposition, to require the annexing or incorporating city or town or fire protection district to assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the district and to pay the city or town or fire protection district a reasonable fee for such fire protection, operation, and maintenance. When at least sixty percent, but less than one hundred percent, valuation of the real estate of a district is annexed to or incorporated into a city or town, a proportionate share of the liabilities of the district at the time of such annexation or incorporation, equal to the percentage of the total assessed valuation of the real estate of the district that has been annexed or incorporated, shall be transferred to the annexing or incorporating city or town.

If all of a fire protection district is included in an area that incorporates as a city or town or is annexed to a city or town or fire protection district, all of the assets and liabilities of the fire protection district shall be transferred to the newly incorporated city or town (~~upon its official date of incorporation~~) on the date on which the fire protection district ceases to provide fire protection services pursuant to section 1 of this act or to the city or town or fire protection district upon the annexation.

**Sec. 4.** RCW 35.02.205 and 1989 c 267 s 3 are each amended to read as follows:

(1) A distribution of assets from the fire protection district to the city or town shall occur as provided in this section upon the annexation or, in the case of an incorporation, on the date on which the city or town withdraws from the fire protection district pursuant to section 1 of this act, of an area by the city or town that constitutes less than five percent of the area of the fire protection district upon the adoption of a resolution by the city or town finding that the annexation or incorporation will impose a significant increase in the fire suppression responsibilities of the city or town with a corresponding reduction in fire suppression responsibilities by the fire protection district. Such a resolution must be adopted within sixty days of the effective date of the annexation, or within sixty days of the official date of incorporation of the city. If the fire protection district does not concur in the finding within sixty days of when a copy of the resolution is submitted to the board of commissioners, arbitration shall proceed under subsection (3) of this section over this issue.

(2) An agreement on the distribution of assets from the fire protection district to the city or town shall be entered into by the city or town and the fire protection district within ninety days of the concurrence by the fire protection district under subsection (1) of this section, or within ninety days of a decision

by the arbitrators under subsection (3) of this section that a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the incorporation or annexation. A distribution shall be based upon the extent of the increased fire suppression responsibilities with a corresponding reduction in fire suppression responsibilities by the fire protection district, and shall consider the impact of any debt obligation that may exist on the property that is so annexed or incorporated. If an agreement is not entered into after this ninety-day period, arbitration shall proceed under subsection (3) of this section concerning this issue unless both parties have agreed to an extension of this period.

(3) Arbitration shall proceed under this subsection over the issue of whether a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the annexation or incorporation with a corresponding reduction in fire suppression responsibilities by the fire protection district, or over the distribution of assets from the fire protection district to the city or town if such a significant increase in fire protection responsibilities will be imposed. A board of arbitrators shall be established for an arbitration that is required under this section. The board of arbitrators shall consist of three persons, one of whom is appointed by the city or town within sixty days of the date when arbitration is required, one of whom is appointed by the fire protection district within sixty days of the date when arbitration is required, and one of whom is appointed by agreement of the other two arbitrators within thirty days of the appointment of the last of these other two arbitrators who is so appointed. If the two are unable to agree on the appointment of the third arbitrator within this thirty-day period, then the third arbitrator shall be appointed by a judge in the superior court of the county within which all or the greatest portion of the area that was so annexed or incorporated lies. The determination by the board of arbitrators shall be binding on both the city or town and the fire protection district.

Passed the House April 20, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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**CHAPTER 263**

[Senate Bill 5875]

**NATIONAL GUARD MUTUAL ASSISTANCE COUNTER-DRUG ACTIVITIES COMPACT**

**Effective Date: 7/25/93**

AN ACT Relating to the powers and duties of the governor as commander-in-chief of the Washington national guard; amending RCW 38.08.040; and adding a new section to chapter 38.08 RCW.

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

**Sec. 1.** RCW 38.08.040 and 1989 c 19 s 7 are each amended to read as follows:

In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or at the lawful request of competent state or local authority in support of enforcement of controlled substance statutes, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the governor believes that such failure is imminent, or in event of public disaster, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as the governor shall deem proper.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 38.08 RCW to read as follows:

(1) The governor, with the consent of congress, is authorized to enter into compacts and agreements for the deployment of the national guard with governors of other states concerning drug interdiction, counter-drug, and demand reduction activities. Article 1, Section 10 of the Constitution of the United States permits a state to enter into a compact or agreement with another state, subject to the consent of congress. Congress, through enactment of Title 4 of the U.S.C. Section 112, encourages the states to enter such compacts for cooperative effort and mutual assistance.

(2) The compact language contained in this subsection is intended to deal comprehensively with the supportive relationships between states in utilizing national guard assets in counter-drug activities.

**NATIONAL GUARD MUTUAL ASSISTANCE  
COUNTER-DRUG ACTIVITIES COMPACT**

**ARTICLE I  
PURPOSE**

The purposes of this compact are to:

(a) Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.



(b) Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.

(c) Permit the national guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of national guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.

(d) Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

(e) Maximize the effectiveness of the national guard in those situations that call for its utilization under this compact.

(f) Provide protection for the rights of national guard personnel when performing duty in other states in counter-drug activities.

(g) Ensure uniformity of state laws in the area of national guard involvement in interstate counter-drug activities by incorporating said uniform laws within the compact.

## **ARTICLE II ENTRY INTO FORCE AND WITHDRAWAL**

(a) This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

## **ARTICLE III MUTUAL ASSISTANCE AND SUPPORT**

(a) As used in this article:

(1) "Drug interdiction and counter-drug activities" means the use of national guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities include, but are not limited to:

(i) Providing information obtained during either the normal course of military training or operations or during counter-drug activities, to federal, state, or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

(ii) Making available any equipment, including associated supplies or spare parts, base facilities, or research facilities of the national guard to any federal,

state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

(iii) Providing available national guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

(iv) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

(v) Operation and maintenance of equipment and facilities of the national guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;

(vi) Providing available national guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;

(vii) Providing available national guard personnel, equipment, and support for administrative, interpretive, analytic, or other purposes;

(viii) Providing available national guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by law, in accordance with other applicable law.

(2) "Demand reduction" means providing available national guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

(3) "Requesting state" means the state whose governor requested assistance in the area of counter-drug activities.

(4) "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.

(5) "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(6) "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

(7) "Mutual assistance and support agreement" or "agreement" means an agreement between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and the national guard of one or more other states, consistent with the purposes of this compact

(8) "Party state" refers to a state that has lawfully enacted this compact.

(9) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(b) Upon the request of a governor of a party state for assistance in the area of interdiction and counter-drug, and demand reduction activities, the governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the national guard forces of his or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard shall be conclusive.

(c) The governor of a party state may, within his or her discretion, withhold the national guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) The national guard of this state is hereby authorized to engage in interdiction and counter-drug activities and demand reduction.

(e) The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the national guard of one or more other party states to provide personnel, assets, and services in the area of interdiction and counter-drug activities and demand reduction. However, no such agreement may be entered into with a party that is specifically prohibited by law from performing activities that are the subject of the agreement.

(f) The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

- (1) Its duration;
- (2) The organization, composition, and nature of any separate legal entity created thereby;
- (3) The purpose of the agreement;
- (4) The manner of financing the agreement and establishing and maintaining its budget;
- (5) The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) Provision for administering the agreement, which may include creation of a joint board responsible for such administration;
- (7) The manner of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;
- (8) The minimum standards for national guard personnel implementing the provisions of this agreement;
- (9) The minimum insurance required of each party to the agreement, if necessary;

(10) The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;

(11) The duties and authority that the national guard personnel of each party state may exercise; and

(12) Any other necessary and proper matters.

Agreements prepared under the provisions of this section are exempt from any general law pertaining to intergovernmental agreements.

(g) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the office of the attorney general of Washington. The attorney general of the state of Washington may delegate his or her approval authority to the appropriate attorney for the Washington national guard subject to those conditions which he or she decides are appropriate. The delegation must be in writing and is subject to the following:

(1) The attorney general, or his or her agent as stated above, shall approve an agreement submitted to him or her under this part unless he or she finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Washington. If the attorney general disapproves an agreement, he or she shall provide a written explanation to the adjutant general of the Washington national guard; and

(2) If the attorney general, or his or her authorized agent as stated above, does not disapprove an agreement within thirty days after its submission to him or her, it is considered approved by him or her.

(h) Whenever national guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug, and demand reduction activities, pursuant to orders, they shall not be held personally liable for any acts or omissions which occur during the performance of their duty.

#### **ARTICLE IV RESPONSIBILITIES**

(a) Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for national guard personnel performing duty pursuant to Title 32 of the United States Code nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. In the event that national guard personnel performing counter-drug activities do not receive rights, benefits, privileges, and immunities otherwise provided for national guard personnel as stated above, the following provisions shall apply:

(1) Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions that occur in the performance of their duty while engaged in carrying

out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

(2) Subject to the provisions of paragraphs (3), (4), and (5) of this Article, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support, shall be assumed and borne by the requesting state.

(3) Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of national guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

(4) Unless there is a written agreement to the contrary, each party state shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

(5) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation shall be deemed items of expense reimbursable pursuant to paragraph (3) of this Article.

(b) Officers and enlisted personnel of the national guard performing duties subject to proper orders pursuant to this compact shall be subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any national guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and said home state shall be responsible for any disciplinary action to be taken. However, nothing in this section shall abrogate the general criminal jurisdiction of the state in which the offense occurred.

**ARTICLE V  
DELEGATION**

Nothing in this compact shall be construed to prevent the governor of a party state from delegating any of his or her responsibilities or authority respecting the national guard, provided that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor shall not delegate the power to request assistance from another state.

**ARTICLE VI  
LIMITATIONS**

Nothing in this compact shall:

(a) Authorize or permit national guard units or personnel to be placed under the operational control of any person not having the national guard rank or status required by law for the command in question.

(b) Deprive a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the national guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

**ARTICLE VII  
CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any state or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Passed the Senate April 20, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

**CHAPTER 264**

[House Bill 2130]

**ACQUIRED HUMAN IMMUNODEFICIENCY INSURANCE PROGRAM CONTINUED****Effective Date:** 7/25/93

AN ACT Relating to the acquired human immunodeficiency syndrome insurance program; amending RCW 70.24.440; adding a new section to chapter 74.09 RCW; and recodifying RCW 70.24.440.

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

**Sec. 1.** RCW 70.24.440 and 1989 c 260 s 3 are each amended to read as follows:

(1) "~~((Class IV))~~ Acquired human immunodeficiency (~~(virus))~~ syndrome insurance program," as used in this section, means the program financed by state funds to assure health insurance coverage for individuals with ~~((class IV))~~ acquired human immunodeficiency (~~(virus-infection))~~ syndrome, as defined by the state board of health, who meet eligibility requirements established by the department of social and health services.

(2) The department of social and health services may pay for health insurance coverage with funds appropriated for this purpose on behalf of persons ~~((who are infected))~~ with ~~((class IV))~~ acquired human immunodeficiency ~~((virus))~~ syndrome, who meet ~~((program))~~ department eligibility requirements, and who are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985 or group health insurance policies~~((: PROVIDED, That this authorization to pay for health insurance shall cease on June 30, 1991, as to any coverage not initiated prior to that date))~~.

**NEW SECTION.** **Sec. 2.** RCW 70.24.440 shall be recodified in chapter 74.09 RCW.

Passed the House April 17, 1993.

Passed the Senate April 18, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

**CHAPTER 265**

[Senate Bill 5309]

**EXCHANGE OF URBAN LAND FOR LAND BANK LAND—PROCEDURE FOR PURCHASE BY PUBLIC AGENCY****Effective Date:** 7/25/93

AN ACT Relating to the land bank; and amending RCW 79.66.090.

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

**Sec. 1.** RCW 79.66.090 and 1984 c 222 s 9 are each amended to read as follows:

If the department of natural resources determines to exchange urban land for land bank land, ~~((the county, city, or town in which the land is situated, and state))~~ public agencies~~(s)~~ defined in RCW 79.01.009 that may benefit from owning the property shall be notified in writing of the determination. The ~~((county, city, town, or state agency has))~~ public agencies have sixty days from the date of notice by the department to submit an application to purchase the land and shall be afforded an opportunity of up to one year, as determined by the board of natural resources, to purchase the land from the land bank at fair market value directly without public auction as authorized under RCW 79.01.009. The board of natural resources, if it deems it in the best interest of the state, may extend the period under terms and conditions as the board determines. If competing applications are received from governmental entities, the board shall select the application which results in the highest monetary value.

Passed the Senate February 16, 1993.

Passed the House April 14, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 266

[Substitute Senate Bill 5310]

### TRESPASS OR WASTE ON PUBLIC LANDS—LIABILITY AND DAMAGES FOR

Effective Date: 7/25/93

AN ACT Relating to trespass or waste of public lands; and amending RCW 79.01.760.

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

**Sec. 1.** RCW 79.01.760 and 1927 c 255 s 200 are each amended to read as follows:

~~((The commissioner of public lands))~~ (1) Every person who, without authorization, uses or occupies public lands, removes anything of value from public lands, or causes waste or damage to public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department of natural resources determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs, including but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.



(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 79.01.756, or 79.40.070.

(3) The department of natural resources is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of, the same, to be commenced as is provided by law.

Passed the Senate March 17, 1993.

Passed the House April 14, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 267

[Substitute Senate Bill 5332]

### UNDERWATER PARKS SYSTEM

Effective Date: 7/25/93

AN ACT Relating to underwater parks; and adding new sections to chapter 43.51 RCW.

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

**NEW SECTION. Sec. 1.** The state parks and recreation commission shall act as the lead agency for the establishment of underwater parks in state waters and for environmental reviews of projects necessary to establish underwater parks. The commission may enter into interagency agreements to facilitate timely receipt of necessary permits from other state agencies and local governments.

**NEW SECTION. Sec. 2.** The state parks and recreation commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

- (1) Plan, construct, and maintain underwater parks;
- (2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;
- (3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;
- (4) Accept gifts and donations for the benefit of underwater parks;
- (5) Facilitate private efforts to construct artificial reefs and underwater parks;
- (6) Work with the federal government, local governments and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fisheries, the department of wildlife and the natural heritage council to carry out the purposes of sections 1 through 4 of this act; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**NEW SECTION. Sec. 3.** The commission may charge a fee for recreational uses of an underwater park to offset a part or all of the costs of creating and administering the underwater park system. The fees and any monetary gifts shall be deposited to the underwater park account, which is created in the state treasury. Funds in the underwater park account shall be expended for the operation and creation of state underwater parks, and shall be subject to appropriation. Before implementing a fee program for underwater park uses, the commission shall submit to the appropriate committees of the legislature an estimate of what the fees would be and a plan for collecting these fees.

**NEW SECTION. Sec. 4.** In establishing an underwater park system, the commission shall seek to create diverse recreational opportunities in areas throughout Washington state. The commission shall place a high priority upon creating units that possess unique or diverse marine life or underwater natural or artificial features such as shipwrecks.

**NEW SECTION. Sec. 5.** The commission is not liable for unintentional injuries to users of underwater parks, whether the facilities are administered by the commission or by another entity or person. However, nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act are each added to chapter 43.51 RCW.

Passed the Senate April 19, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 268

[Engrossed Senate Bill 5342]

### ALCOHOL MANUFACTURED AS MOTOR FUEL—MOTOR VEHICLE FUEL TAX EXEMPTION AND CREDIT FOR SMALL MANUFACTURERS

Effective Date: 7/25/93

AN ACT Relating to the tax exemption and tax credit for alcohol used as fuel; repealing RCW 82.36.225; and adding a new section to chapter 82.36 RCW.

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

**NEW SECTION. Sec. 1.** RCW 82.36.225 and 1991 c 145 s 2, 1985 c 371 s 4, 1981 c 342 s 4, & 1980 c 131 s 3 are each repealed.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.36 RCW to read as follows:

(1) Alcohol of any proof that is sold in this state for use as fuel in motor vehicles, farm implements and machines, or implements of husbandry is exempt from the motor vehicle fuel tax under this chapter if such alcohol was manufactured by a company that has been verified by the department as having sold less than eight million gallons of alcohol for use as motor fuel in the prior calendar year.

(2) In addition, a tax credit of sixty percent of the tax rate imposed by RCW 82.36.025 shall be given for every gallon of alcohol receiving the exemption under subsection (1) of this section and used in an alcohol-gasoline blend which contains at least nine and one-half percent or more by volume of alcohol: PROVIDED, That in no case may the tax credit claimed be greater than the tax due on the gasoline portion of the blended fuel.

(3) This section shall expire on December 31, 1999.

Passed the Senate April 20, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 269

[Substitute Senate Bill 5492]

### SECRETARY OF STATE—ESTABLISHMENT OF FEES PAID TO OFFICE BY RULE

Effective Date: 7/1/93

AN ACT Relating to fees paid to the secretary of state's office; amending RCW 23.86.070, 23B.01.220, 23B.01.530, 23B.01.560, 24.03.405, 24.03.410, 24.06.450, 24.06.455, 24.06.520, 24.20.020, 24.24.100, 31.12.085, 33.28.010, 43.07.120, and 46.64.040; adding a new section to chapter 43.07 RCW; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 23.86.070 and 1991 c 72 s 15 are each amended to read as follows:

For filing articles of incorporation of an association organized under this chapter or filing application for a certificate of authority by a foreign corporation, there shall be paid to the secretary of state the sum of twenty-five dollars (~~and for filing of an amendment the sum of twenty dollars~~). Fees for filing an amendment to articles of incorporation shall be established by the secretary of state by rule. For filing other documents with the secretary of state and issuing certificates, fees shall be as prescribed in RCW 23B.01.220. Associations subject to this chapter shall not be subject to any corporation license fees excepting the fees hereinabove enumerated.

**Sec. 2.** RCW 23B.01.220 and 1992 c 107 s 7 are each amended to read as follows:

(1) The secretary of state shall collect in accordance with the provisions of this title:

- (a) Fees for filing documents and issuing certificates;
- (b) Miscellaneous charges;
- (c) License fees as provided in RCW 23B.01.500 through 23B.01.550;
- (d) Penalty fees; and
- (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

~~((#))~~ One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:

- ~~((#))~~ (a) Articles of incorporation; and
- ~~((#))~~ (b) Application for certificate of authority;
- ~~((b) Fifty dollars for an))~~

(3) The secretary of state shall establish by rule, fees for the following:

- (a) Application for reinstatement;
- ~~((e) Twenty five dollars for:~~
- ~~((#))~~ (b) Articles of correction;
- ~~((#))~~ (c) Amendment of articles of incorporation;
- ~~((#))~~ (d) Restatement of articles of incorporation, with or without amendment;

- ~~((#))~~ (e) Articles of merger or share exchange;
- ~~((#))~~ (f) Articles of revocation of dissolution; ~~and~~
- ~~((#))~~ (g) Application for amended certificate of authority;
- ~~((d) Twenty dollars for an))~~ (h) Application for reservation, registration, or assignment of reserved name;

~~((e) Ten dollars for:))~~

(i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;

~~((#))~~ (j) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

~~((#))~~ (k) Initial report; and

~~((#))~~ (l) Any document not listed in this subsection that is required or permitted to be filed under this title~~((#))~~.

~~((#) No fee))~~ (4) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial cost study performed by the secretary.

(5) The secretary of state shall not collect fees for:

- ~~((#))~~ (a) Agent's consent to act as agent;
- ~~((#))~~ (b) Agent's resignation, if appointed without consent;
- ~~((#))~~ (c) Articles of dissolution;

~~((+))~~ (d) Certificate of judicial dissolution;

~~((+))~~ (e) Application for certificate of withdrawal; and

~~((+))~~ (f) Annual report when filed concurrently with the payment of annual license fees.

~~((3))~~ (6) The secretary of state shall collect a fee ~~((of twenty five dollars))~~ in an amount established by the secretary of state by rule per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

~~((4))~~ (7) The secretary of state shall establish by rule and collect a fee from every person or organization:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation ~~((, ten dollars for the certificate, plus twenty cents for each page copied))~~;

(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate ~~((, ten dollars))~~; and

(c) For furnishing copies of any document, instrument, or paper relating to a corporation, other than of an initial report or an annual report ~~((, one dollar for the first page and twenty cents for each page copied thereafter. The fee for furnishing a copy of the most recent annual report of a corporation (or of the initial report if no annual report has been filed) is one dollar, and the fee for furnishing a copy of any other annual report of a corporation is five dollars))~~.

~~((5))~~ (8) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.

**Sec. 3.** RCW 23B.01.530 and 1989 c 165 s 19 are each amended to read as follows:

For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect an annual license fee of ten dollars for each inactive corporation and fifty dollars for other corporations. As used in this section, "inactive corporation" means a corporation that certifies at the time of filing under this section that it did not engage in any business activities during the year ending on the expiration date of its corporate license.

**Sec. 4.** RCW 23B.01.560 and 1989 c 165 s 22 are each amended to read as follows:

(1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of administrative dissolution had the corporation been in

active status, plus a surcharge (~~(of twenty five percent)~~) established by the secretary of state by rule, and the license fee for the year of reinstatement.

(2) The penalties herein established shall be in lieu of any other penalties or interest which could have been assessed by the secretary of state under the corporation laws or which, under those laws, would have accrued during any period of delinquency, dissolution, or expiration of corporate duration.

**Sec. 5.** RCW 24.03.405 and 1991 c 223 s 1 are each amended to read as follows:

(1) The secretary of state shall charge and collect for:

~~((1)) (a) Filing articles of incorporation ((~~or~~), thirty dollars.~~

(b) Filing an annual report of a domestic or foreign corporation, ten dollars.

(c) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.

(2) The secretary of state shall establish by rule, fees for the following:

(a) An application for reinstatement under RCW 24.03.386(~~(, thirty dollars)~~).

~~((2)) (b) Filing articles of amendment or restatement or an amendment or supplement to an application for reinstatement(~~(, twenty dollars)~~).~~

~~((3)) (c) Filing articles of merger or consolidation(~~(, twenty dollars)~~).~~

~~((4)) (d) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, or any combination of these(~~(, ten dollars)~~).~~ A separate fee for filing such statement shall not be charged if the statement appears in an amendment to articles of incorporation or in conjunction with the filing of the annual report.

~~((5)) (e) Filing articles of dissolution, no fee.~~

~~((6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.~~

~~((7)) (f) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state(~~(, twenty dollars)~~).~~

~~((8)) (g) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.~~

~~((9)) (h) Filing a certificate by a foreign corporation of the appointment of a registered agent(~~(, ten dollars)~~).~~ A separate fee for filing such certificate shall not be charged if the statement appears in conjunction with the filing of the annual report.

~~((10)) (i) Filing a certificate of election adopting the provisions of chapter 24.03 RCW(~~(, twenty dollars)~~).~~

~~((11)) (j) Filing an application to reserve a corporate name(~~(, twenty dollars)~~).~~

~~((12)) (k) Filing a notice of transfer of a reserved corporate name(~~(, twenty dollars)~~).~~

~~((13)) (l) Filing a name registration(~~(, twenty dollars per year, or part thereof)~~).~~

~~((14) Filing an annual report of a domestic or foreign corporation, ten dollars.~~

~~(15))~~ (m) Filing any other statement or report authorized for filing under this chapter(~~(, ten dollars)~~).

(3) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biannual cost study performed by the secretary.

**Sec. 6.** RCW 24.03.410 and 1982 c 35 s 111 are each amended to read as follows:

The secretary of state shall ~~((charge))~~ establish fees by rule and collect:

(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation(~~(, five dollars for the certificate, plus twenty cents for each page copied)~~).

(2) For furnishing a certificate, under seal, attesting to the status of a corporation(~~(, five dollars)~~).

(3) For furnishing copies of any document, instrument or paper relating to a corporation(~~(, one dollar for the first page and twenty cents for each page copied thereafter)~~).

(4) At the time of any service of process on him or her as registered agent of a corporation(~~(, twenty-five dollars, which)~~) an amount that may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

**Sec. 7.** RCW 24.06.450 and 1991 c 223 s 2 are each amended to read as follows:

(1) The secretary of state shall charge and collect for:

~~((1))~~ (a) Filing articles of incorporation, thirty dollars.

~~((2) Filing articles of amendment or restatement, twenty dollars.~~

~~((3))~~ (b) Filing an annual report, ten dollars.

(c) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.

(2) The secretary of state shall establish by rule, fees for the following:

(a) Filing articles of amendment or restatement.

(b) Filing articles of merger or consolidation(~~(, twenty dollars)~~).

~~((4))~~ (c) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, or any combination of these(~~(, ten dollars)~~). A separate fee for filing such statement shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

~~((5))~~ (d) Filing articles of dissolution, no fee.

~~((6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.~~

~~((7))~~ (e) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state(~~(, twenty dollars)~~).

~~((8))~~ (f) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state(~~(, twenty dollars)~~).

~~((9))~~ (g) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state(~~(, twenty dollars)~~).

~~((10))~~ (h) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.

~~((11))~~ (i) Filing a certificate by a foreign corporation of the appointment of a registered agent(~~(, ten dollars)~~). A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

~~((12))~~ (j) Filing a certificate by a foreign corporation of the revocation of the appointment of a registered agent(~~(, ten dollars)~~). A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

~~((13))~~ (k) Filing an application to reserve a corporate name(~~(, twenty dollars)~~).

~~((14))~~ (l) Filing a notice of transfer of a reserved corporate name(~~(, twenty dollars)~~).

~~((15))~~ (m) Filing any other statement or report(~~(, including an annual report,)~~) of a domestic or foreign corporation(~~(, ten dollars)~~).

(3) Fees shall be adjusted by rule in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial cost study performed by the secretary.

Sec. 8. RCW 24.06.455 and 1982 c 35 s 155 are each amended to read as follows:

The secretary of state shall ~~((charge and collect in advance))~~ establish by rule, fees for the following:

(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation(~~(, five dollars for the certificate, plus twenty cents for each page copied)~~);

(2) For furnishing a certificate, under seal, attesting to the status of a corporation; or any other certificate(~~(, five dollars)~~);

(3) For furnishing copies of any document, instrument, or paper relating to a corporation(~~(, one dollar for the first page and twenty cents for each page copied thereafter)~~); and

(4) At the time of any service of process on ~~((him))~~ the secretary of state as resident agent of any corporation(~~(, twenty-five dollars, which)~~). This amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

Sec. 9. RCW 24.06.520 and 1982 c 35 s 162 are each amended to read as follows:



If the term of existence of a corporation which was organized under this chapter, or which has availed itself of the privileges thereby provided expires, such corporation shall have the right to renew within two years of the expiration of its term of existence. The corporation may renew the term of its existence for a definite period or perpetually and be reinstated under any name not then in use by or reserved for a domestic corporation organized under any act of this state or a foreign corporation authorized under any act of this state to transact business or conduct affairs in this state. To do so the directors, members and officers shall adopt amended articles of incorporation containing a certification that the purpose thereof is a reinstatement and renewal of the corporate existence. They shall proceed in accordance with the provisions of this chapter for the adoption and filing of amendments to articles of incorporation. Thereupon such corporation shall be reinstated and its corporate existence renewed as of the date on which its previous term of existence expired and all things done or omitted by it or by its officers, directors, agents and members before such reinstatement shall be as valid and have the same legal effect as if its previous term of existence had not expired.

A corporation reinstating under this section shall pay to the state all fees and penalties which would have been due if the corporate charter had not expired, plus a reinstatement fee (~~(of twenty five dollars)~~) established by the secretary of state by rule.

**Sec. 10.** RCW 24.20.020 and 1982 c 35 s 165 are each amended to read as follows:

The secretary of state shall file such articles of incorporation in ~~((his))~~ the secretary of state's office and issue a certificate of incorporation to any such lodge or other society upon the payment of the sum of twenty dollars.

**Sec. 11.** RCW 24.24.100 and 1982 c 35 s 167 are each amended to read as follows:

The secretary of state shall file such articles of incorporation or amendment thereto in ~~((his))~~ the secretary of state's office and issue a certificate of incorporation or amendment, as the case may be, to such fraternal association upon the payment of a fee in the sum of twenty dollars.

**Sec. 12.** RCW 31.12.085 and 1984 c 31 s 10 are each amended to read as follows:

(1) Upon the approval of the supervisor under RCW 31.12.075(2), the applicants shall file a copy of the articles of incorporation with the secretary of state. Upon receipt of the approved articles of incorporation and a ~~((five))~~ twenty dollar filing fee to be provided by the applicants, the secretary of state shall file and record the articles of incorporation. The applicants shall in writing promptly notify the supervisor of the exact date of the filing.

(2) Upon the filing and recording of the approved articles of incorporation with the secretary of state, the persons named in the articles of incorporation and their successors may operate as a credit union, which shall have the powers and

be subject to the duties and obligations of this chapter. A credit union shall not conduct business until the articles have been recorded by the secretary of state.

(3) A credit union shall organize and begin business within six months of the date that its articles of incorporation are filed and recorded with the secretary of state or its charter shall become void, unless the supervisor for cause grants an extension of the six-month period. The supervisor shall not grant a single extension exceeding three months, but may grant as many extensions to a credit union as circumstances require.

**Sec. 13.** RCW 33.28.010 and 1981 c 302 s 33 are each amended to read as follows:

The secretary of state shall collect fees of twenty dollars in advance (~~the following fees from each association~~) for filing articles of incorporation (~~or amendments thereof, or~~). The secretary of state shall establish by rule, fees for amendments to articles of incorporation, other certificates required to be filed in his or her office, (~~ten dollars~~) and for furnishing copies of papers filed in his or her office (~~, per folio, twenty cents~~).

Every association shall also pay to the secretary of state, for filing any instrument with him or her, the same fees as are required of general corporations for filing similar papers.

**NEW SECTION.** **Sec. 14.** A new section is added to chapter 43.07 RCW to read as follows:

The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under chapter 11.110 or 19.09 RCW:

- (1) Any service rendered in-person at the secretary of state's office;
- (2) Any expedited service;
- (3) The electronic transmittal of documents;
- (4) The providing of information by microfiche or other reduced-format compilation;
- (5) The handling of checks or drafts for which sufficient funds are not on deposit;
- (6) The resubmission of documents previously submitted to the secretary of state where the documents have been returned to the submitter to make such documents conform to the requirements of the applicable statute;
- (7) The handling of telephone requests for information; and
- (8) Special search charges.

**Sec. 15.** RCW 43.07.120 and 1991 c 72 s 53 are each amended to read as follows:

(1) The secretary of state shall establish by rule and collect the fees (~~herein prescribed for the secretary of state's official services~~) in this subsection:

(a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office (~~for which no other fee is provided, fifty cents per~~

~~page for the first ten pages and twenty five cents per page for each additional page));~~

(b) For any certificate under seal(~~(, five dollars)~~);

(c) For filing and recording trademark(~~(, fifty dollars)~~);

(d) For each deed or patent of land issued by the governor(~~(, if for one hundred and sixty acres of land, or less, one dollar, and for each additional one hundred and sixty acres, or fraction thereof, one dollar)~~);

(e) For recording miscellaneous records, papers, or other documents(~~(, five dollars for filing each case)~~).

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under Title 23B RCW, chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, or 25.10 RCW:

(a) Any service rendered in-person at the secretary of state's office;

(b) Any expedited service;

(c) The electronic or facsimile transmittal of information from corporation records or copies of documents;

(d) The providing of information by (~~(microfiche)~~) micrographic or other reduced-format compilation;

(e) The handling of checks (~~(or)~~), drafts, or credit or debit cards upon adoption of rules authorizing their use for which sufficient funds are not on deposit; and

(f) (~~The resubmission of documents previously submitted to the secretary of state where the documents have been returned to the submitter to make such documents conform to the requirements of the applicable statute;~~

~~(g) The handling of telephone requests for information; and~~

~~(h))~~ Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) The secretary of state may adopt rules for the use of credit or debit cards for payment of fees.

(5) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court shall be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

**Sec. 16.** RCW 46.64.040 and 1982 c 35 s 197 are each amended to read as follows:

The acceptance by a nonresident of the rights and privileges conferred by law in the use of the public highways of this state, as evidenced by his or her operation of a vehicle thereon, or the operation thereon of his or her vehicle with

his or her consent, express or implied, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her growing out of any accident, collision, or liability in which such nonresident may be involved while operating a vehicle upon the public highways, or while his or her vehicle is being operated thereon with his or her consent, express or implied, and such operation and acceptance shall be a signification of ~~((his))~~ the nonresident's agreement that any summons or process against him or her which is so served shall be of the same legal force and validity as if served on ~~((him))~~ the nonresident personally within the state of Washington. Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision or liability and thereafter within three years departs from this state appoints the secretary of state of the state of Washington as his or her lawful attorney for service of summons as provided in this section for nonresidents. Service of such summons or process shall be made by leaving two copies thereof with a fee ~~((of twenty-five dollars))~~ established by the secretary of state by rule with the secretary of state of the state of Washington, or at ~~((his))~~ the secretary of state's office, and such service shall be sufficient and valid personal service upon said resident or nonresident: PROVIDED, That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known address of the said defendant, and the plaintiff's affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff's attorney that ~~((he))~~ the attorney has with due diligence attempted to serve personal process upon the defendant at all addresses known to him or her of defendant and further listing in his or her affidavit the addresses at which he or she attempted to have process served. However, if process is forwarded by registered mail and defendant's endorsed receipt is received and entered as a part of the return of process then the foregoing affidavit of plaintiff's attorney need only show that the defendant received personal delivery by mail: PROVIDED FURTHER, That personal service outside of this state in accordance with the provisions of law relating to personal service of summons outside of this state shall relieve the plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at ~~((his))~~ the defendant's address, if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee ~~((of twenty-five dollars))~~ paid by the plaintiff to the secretary of state shall be taxed as part of his or her costs if he or she prevails in the action. The secretary of state shall keep a record of all such summons and processes, which shall show the day of service.

**NEW SECTION. Sec. 17.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 20, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 270

[Senate Bill 5352]

### RETIREMENT AGREEMENT PAYMENTS—EFFECT ON PENSION BENEFITS CALCULATION

Effective Date: 7/25/93

AN ACT Relating to the effect of payments based on retirement agreements on calculation of pension benefits; and adding new sections to chapter 41.50 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 41.50 RCW to read as follows:

Any payment made by an employer to a member of any retirement system enumerated in RCW 41.50.030 based on either an agreement of the employee to terminate or retire; or notification to the employer of intent to retire; shall affect retirement as follows:

(1) If the agreement does not require the employee to perform additional service, the payment shall not be used in any way to calculate the pension benefit.

(2) If the agreement requires additional service and results in payment at the same or a lower rate than that paid for the same or similar service by other employees it may be included in the pension benefit calculation but shall be deemed excess compensation and is billable to the employer as provided in RCW 41.50.150.

(3) If the agreement requires additional service and results in payment at a rate higher than that paid for the same or similar service by other employees, that portion of the payment which equals the payment for the same or similar service shall be treated as described in subsection (2) of this section, and the balance of the payment shall be treated as described in subsection (1) of this section.

**NEW SECTION. Sec. 2.** A new section is added to chapter 41.50 RCW to read as follows:

Members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, and whose retirement allowance has

been reduced under RCW 41.50.150 or is reduced after the effective date of this act under section (1) of this act, shall have an opportunity to change the retirement allowance payment option selected by the member under RCW 41.32.530. Any request for a change shall be made in writing to the department no later than October 31, 1993, and shall apply prospectively only.

NEW SECTION. Sec. 3. A new section is added to chapter 41.50 RCW to read as follows:

(1) Retirees whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, shall not be required to repay to the trust funds any overpayments resulting from the employer misreporting, subject to the conditions provided in subsection (2) of this section. The retirees' allowances shall be prospectively adjusted to reflect the benefits to which the retirees are correctly entitled.

(2) Subsection (1) of this section shall apply only to members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district.

(3) Any retirees under subsection (2) of this section who, since January 1, 1990, have had their retirement allowances reduced under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall have their allowances adjusted to reflect the benefits to which the retirees are correctly entitled, but without a reduction to recoup prior overpayments. The retirees shall be reimbursed by the retirement system for the cumulative amount of the reduction in the retirement allowance that has occurred since January 1, 1990, to recoup prior overpayments.

(4) Any retirees covered by subsection (2) of this section who, after January 1, 1990, repaid a previous overpayment in a lump sum under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall be reimbursed by the retirement system for the amount of the lump sum repayment.

Passed the Senate April 22, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 271

[Substitute Senate Bill 5503]

WORKERS' COMPENSATION—LOSS OF  
EARNING POWER BENEFIT RATE INCREASED

Effective Date: 5/7/93

AN ACT Relating to loss of earning power payments; amending RCW 51.32.090; and declaring an emergency.

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

**Sec. 1.** RCW 51.32.090 and 1988 c 161 s 4 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before the effective date of this act, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after the effective date of this act, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the

judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

Once the worker returns to work under the terms of this subsection, he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 20, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.



## CHAPTER 272

[Senate Bill 5723]

REVENUE COLLECTION BY DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES—ADDITIONAL POWERS

Effective Date: 7/25/93

AN ACT Relating to revenue collection by the department of social and health services; amending RCW 43.20B.140; adding a new section to chapter 43.20B RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a new section to 48.46 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 43.20B RCW to read as follows:

Whenever a notice and finding of responsibility, or appeal therefrom, has become final, the department may file a lien against the real and personal property of all persons found financially responsible under RCW 43.20B.330 with the county auditor of the county where the persons reside or own property.

**Sec. 2.** RCW 43.20B.140 and 1987 c 283 s 13 are each amended to read as follows:

(1) The department is authorized to recover the cost of ~~((medical care))~~ public assistance benefits provided under a program under chapter 74.09 RCW provided to a recipient who was sixty-five years or older, upon the recipient's death except:

(a) Where there is a surviving spouse; or

(b) Where there is a surviving child under ((21)) twenty-one years of age or blind or disabled as defined in the state plan under Title XIX of the social security act; or

(c) ~~((To the extent of the first fifty thousand dollars of the estate value at the time of death, where there are surviving children other than as defined above, and not to exceed thirty five percent of the remainder))~~ For family heirlooms, collectibles, antiques, papers, jewelry, photos, or other personal effects that have been held in the possession of the deceased recipient to which a surviving child may otherwise be entitled not to exceed a total fair market value of two thousand dollars.

(2) The department may assert and enforce a claim against the estate of the deceased recipient for the debt in subsection (1) of this section, in accordance with chapter 11.40 RCW.

(3) The remedies in subsection (2) of this section are nonexclusive and upon the death of the recipient, the department shall have a lien for the debt in subsection (1) of this section. The lien attaches to the real property of which the deceased recipient was seized immediately before death. Upon subsequent filing of the notice thereof with the county auditor of the county in which the real property is located, the lien shall be deemed to relate back and be effective against such property as of the date of the recipient's death. Recovery under the lien shall be upon the sale or transfer of the subject property.

**NEW SECTION.** Sec. 3. A new section is added to chapter 48.21 RCW to read as follows:

An insurer providing group disability insurance coverage for health care in this state shall waive a preauthorization requirement from the insurer before an insured or the insured's covered dependents receive mental health care and treatment rendered by a state hospital if the insured or any of the insured's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010.

**NEW SECTION.** Sec. 4. A new section is added to chapter 48.44 RCW to read as follows:

A health care service contractor providing hospital or medical services or benefits in this state shall waive a preauthorization from the contractor before an insured or an insured's covered dependents receive mental health treatment rendered by a state hospital as defined in RCW 72.23.010 if the insured or the insured's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010.

**NEW SECTION.** Sec. 5. A new section is added to chapter 48.46 RCW to read as follows:

A health maintenance organization providing services or benefits for hospital or medical care coverage in this state shall waive a preauthorization from the health maintenance organization before an enrolled participant or the enrolled participant's covered dependents receive mental health treatment rendered by a state hospital as defined in RCW 72.23.010 if the enrolled participant or the enrolled participant's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010.

**NEW SECTION.** Sec. 6. This act does not have the effect of terminating or in any way modifying any liability, civil or criminal, that is already in existence on the effective date of this act.

**NEW SECTION.** Sec. 7. 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 Senate April 20, 1993.

Passed the House April 18, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 273

[Substitute Senate Bill 5837]

## LOCAL GOVERNMENTS AUTHORIZED TO ENTER INTO PAYMENT AGREEMENTS

Effective Date: 5/7/93

AN ACT Relating to state and local government finance; adding a new chapter to Title 39 RCW; and declaring an emergency.

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

**NEW SECTION. Sec. 1. LEGISLATIVE FINDINGS AND DECLARATIONS.** The legislature finds and declares that the issuance by state and local governments of bonds and other obligations, and the investment of moneys in connection with these obligations, involve exposure to changes in interest rates; that a number of financial instruments are available to lower the net cost of these borrowings, to increase the net return on these investments, or to reduce the exposure of state and local governments to changes in interest rates; that these reduced costs and increased returns for state and local governments will benefit taxpayers and ratepayers; and that the legislature desires to provide state and local governments with express statutory authority to take advantage of these instruments. In recognition of the complexity of these financial instruments, the legislature desires that this authority be subject to certain limitations, and be granted for an initial period of two years.

**NEW SECTION. Sec. 2. DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, port district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement.

**NEW SECTION. Sec. 3. AUTHORITY TO ENTER INTO PAYMENT AGREEMENTS.** (1) Subject to subsections (2) and (3) of this section, any governmental entity may enter into a payment agreement in connection with, or incidental to, the issuance, incurring, or carrying of specific obligations, for the purpose of managing or reducing the governmental entity's exposure to fluctuations or levels of interest rates. No governmental entity may carry on a business of acting as a dealer in payment agreements.

(2) No governmental entity may enter into a payment agreement under this chapter unless it first:

(a) Finds and determines, by ordinance or resolution, that the payment agreement, if fully performed by all parties thereto, will (i) reduce the amount or duration of its exposure to changes in interest rates; or (ii) result in a lower net cost of borrowing with respect to the related obligations, or a higher net rate of return on investments made in connection with, or incidental to, the issuance, incurring, or carrying of those obligations;

(b) Obtains, on or prior to the date of execution of the payment agreement, a written certification from a financial advisor that (i) the terms and conditions of the payment agreement and any ancillary agreements, including without limitation, the interest rate or rates and any other amounts payable thereunder, are commercially reasonable in light of then existing market conditions; and (ii) the finding and determination contained in the ordinance or resolution required by (a) of this subsection is reasonable.

(3) Prior to selecting the other party to a payment agreement, a governmental entity shall solicit and give due consideration to proposals from at least two entities that meet the criteria set forth in section 4(2) of this act. Such solicitation and consideration shall be conducted in such manner as the governmental entity shall determine is reasonable.

**NEW SECTION. Sec. 4. PAYMENT AGREEMENTS—TERMS.** (1) Subject to subsections (2), (3), and (4) of this section, payment agreements entered into by any governmental entity may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable.

(2) No governmental entity may enter into a payment agreement under this chapter unless:

(a) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the two highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that then has the required ratings; or

(b)(i) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the three highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that has the required ratings; and

(ii) The payment obligations of the other party under the agreement are collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, that (A) are deposited with the governmental entity or an agent of the governmental entity; and (B) maintain a market value of not less than one hundred two percent of the net market value of the payment agreement to the governmental entity, as such net market value may be defined and determined from time to time under the terms of the payment agreement.

(3) No governmental entity may enter into a payment agreement with a party who qualifies under subsection (2)(a) of this section unless the payment agreement provides that, in the event the credit rating of the other party or its guarantor falls below the level required by subsection (2)(a) of this section, such party will comply with the collateralization requirements contained in subsection (2)(b) of this section.

(4) No governmental entity may enter into a payment agreement unless:

(a) The notional amount of the payment agreement does not exceed the principal amount of the obligations with respect to which the payment agreement is made; and

(b) The term of the payment agreement does not exceed the final term of the obligations with respect to which the payment agreement is made.

**NEW SECTION. Sec. 5. PAYMENT AGREEMENTS—PAYMENTS—CREDIT ENHANCEMENTS.** (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, any payments required to be made by the governmental entity under a payment

agreement entered into in connection with the issuance, incurring, or carrying of those obligations may be made from money set aside or pledged to pay or secure the payment of those obligations or from any other legally available source.

(2) Any governmental entity may enter into credit enhancement, liquidity, line of credit, or other similar agreements in connection with, or incidental to, the execution of a payment agreement. The credit enhancement, liquidity, line of credit, or other similar agreement may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable.

NEW SECTION. **Sec. 6. CALCULATIONS REGARDING PAYMENT OF OBLIGATIONS—STATUS OF PAYMENTS.** (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, if the governmental entity enters into a payment agreement with respect to those obligations, then it may elect to treat the amounts payable from time to time with respect to those obligations as the amounts payable after giving effect to the payment agreement for the purposes of calculating:

(a) Rates and charges to be imposed by a revenue-producing enterprise if the revenues are pledged or used to pay those obligations;

(b) Any taxes to be levied and collected to pay those obligation; and

(c) Payments or debt service on those obligations for any other purpose.

(2) A payment agreement and any obligation of the governmental entity to make payments under the agreement in future fiscal years shall not constitute debt or indebtedness of the governmental entity for purposes of state constitutional and statutory debt limitation provisions if the obligation to make any payments is contingent upon the performance of the other party or parties to the agreement, and no moneys are paid to the governmental entity under the payment agreement that must be repaid in future fiscal years.

NEW SECTION. **Sec. 7. EXPIRATION DATE—VALIDITY OF CONTRACTS.** (1) Except as provided in subsection (3) of this section, no governmental entity may enter a payment agreement under section 3 of this act after June 30, 1995.

(2) The termination of authority to enter payment agreements after June 30, 1995, shall not affect the validity of any payment agreements or other contracts entered into under section 3 of this act on or before that date.

(3) A governmental entity may enter into a payment agreement under and in accordance with this chapter after June 30, 1995, to replace a payment agreement that relates to specified obligations issued on or before that date and that has terminated before the final term of those obligations.

(4) The state finance committee shall make a report to the appropriate legislative committees on payment agreements authorized in this act. The report shall include the governmental entity entering into a payment agreement, the amount of the agreement, the expected savings resulting from the agreement, the transactions cost, and any other information the state finance committee

determines relevant. The report shall be submitted on November 30, 1993, and December 30, 1994.

NEW SECTION. **Sec. 8. AUTHORITY CUMULATIVE.** The powers conferred by this chapter are in addition to, and not in substitution for, the powers conferred by any existing law, and the limitations imposed by this chapter do not directly or indirectly modify, limit, or affect the powers conferred by any existing law.

NEW SECTION. **Sec. 9. LIBERAL CONSTRUCTION.** This chapter shall be liberally construed to effect its purposes.

NEW SECTION. **Sec. 10. CAPTIONS.** Captions used in this chapter do not constitute any part of the law.

NEW SECTION. **Sec. 11. SEVERABILITY.** 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. 12. LEGISLATIVE DIRECTIVE.** Sections 1 through 11 of this act shall constitute a new chapter in Title 39 RCW.

NEW SECTION. **Sec. 13.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 20, 1993.

Passed the House April 18, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

## CHAPTER 274

[Engrossed Senate Bill 5879]

### CHILD PASSENGER RESTRAINT SYSTEMS—REVISED REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to child passenger restraint systems; amending RCW 46.61.687; and prescribing penalties.

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

**Sec. 1.** RCW 46.61.687 and 1987 c 330 s 745 are each amended to read as follows:

(1) ~~((After December 31, 1983, the parent or legal guardian of a child less than five years old, when the parent or legal guardian is operating anywhere in the state his or her own motor vehicle registered under chapter 46.16 RCW, in which the child is a passenger, shall have the child properly secured in a manner approved by the state patrol. Even though a separate child passenger restraint device is considered the ideal method of protection, a properly adjusted and~~

~~fastened, federally approved seat belt is deemed sufficient to meet the requirements of this section for children one through four years of age))~~ Whenever a child who is less than six years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, the driver of the vehicle shall keep the child properly restrained as follows:

(a) If the child is less than two years of age, the child shall be properly restrained in a child restraint system that complies with standards of the United States department of transportation and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system;

(b) If the child is less than six but at least two years of age, the child shall be restrained either as specified in (a) of this subsection or with a safety belt properly adjusted and fastened around the child's body.

~~(2) ((During the period from January 1, 1984, to July 1, 1984, a person violating subsection (1) of this section may be issued a written warning of the violation. After July 1, 1984,))~~ A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system within seven days to the jurisdiction issuing the notice, the jurisdiction shall dismiss the notice of traffic infraction. If the person fails to present proof of acquisition within the time required, he or she is subject to a penalty assessment of not less than thirty dollars.

(3) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action.

Passed the Senate March 17, 1993.

Passed the House April 22, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 275

[Senate Bill 5906]

### INDUSTRIAL CONTROL PANELS—DEFINITION AND INSPECTION STANDARDS

Effective Date: 7/25/93

AN ACT Relating to electrical inspection standards; and amending RCW 19.28.005, 19.28.010, and 19.28.060.

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

**Sec. 1.** RCW 19.28.005 and 1988 c 81 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter.



(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Board" means the electrical board under RCW 19.28.065.

(3) "Chapter" means chapter 19.28 RCW.

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department or the director's designee.

(6) "Electrical construction trade" includes but is not limited to installing or maintaining electrical wires and equipment that are used for light, heat, or power and installing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(7) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(8) "Equipment" means any equipment or apparatus that directly uses, conducts, or is operated by electricity but does not mean plug-in household appliances.

(9) "Industrial control panel" means a factory-wired or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices. The panel may include disconnect means and motor branch circuit protective devices.

(10) "Journeyman electrician" means a person who has been issued a journeyman electrician certificate of competency by the department.

~~((40))~~ (11) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department.

**Sec. 2.** RCW 19.28.010 and 1992 c 79 s 2 are each amended to read as follows:

(1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures, except for telephone, telegraph, radio, and television wires and equipment, and television antenna installations, signal strength amplifiers, and coaxial installations pertaining thereto shall be in strict conformity with this chapter, the statutes of the state of Washington, and the rules issued by the department, and shall be in conformity with approved methods of construction for safety to life and property. All wires and equipment that fall within section 90.2(b)(5) of the National Electrical Code, 1981 edition, are exempt from the requirements of this chapter. The regulations and articles in the National Electrical Code, ~~((as approved by the American Standards Association, and in))~~ the national electrical safety code, ~~((as approved by the American Standards Association,))~~ and other installation and safety regulations approved by the ~~((American Standards Association))~~ national fire protection association, as modified or supplemented by rules issued by the department in

furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of the approved methods of construction. All materials, devices, appliances, and equipment used in such installations shall be of a type that conforms to applicable standards or be indicated as acceptable by the established standards of ~~((the Underwriters' Laboratories, Inc. or other))~~ any electrical product testing ((laboratories)) laboratory which ((are)) is accredited by the department. Industrial control panels, utilization equipment, and their components do not need to be listed, labeled, or otherwise indicated as acceptable by an accredited electrical product testing laboratory unless specifically required by the National Electrical Code, 1993 edition.

(2) Residential buildings or structures moved into or within a county, city, or town are not required to comply with all of the requirements of this chapter, if the original occupancy classification of the building or structure is not changed as a result of the move. This subsection shall not apply to residential buildings or structures that are substantially remodeled or rehabilitated.

(3) This chapter shall not limit the authority or power of any city or town to enact and enforce under authority given by law, any ordinance, rule, or regulation requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. A city or town shall require that its electrical inspectors meet the qualifications provided for state electrical inspectors in accordance with RCW 19.28.070. In a city or town having an equal, higher, or better standard the installations, materials, devices, appliances, and equipment shall be in accordance with the ordinance, rule, or regulation of the city or town. Electrical equipment associated with spas, hot tubs, swimming pools, and hydromassage bathtubs shall not be offered for sale or exchange unless the electrical equipment is certified as being in compliance with the applicable product safety standard by bearing the certification mark of an approved electrical products testing laboratory.

(4) Nothing in this chapter may be construed as permitting the connection of any conductor of any electric circuit with a pipe that is connected with or designed to be connected with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of the waterworks piping system.

**Sec. 3.** RCW 19.28.060 and 1988 c 81 s 3 are each amended to read as follows:

(1) Prior to January 1st of each year, the director shall obtain an authentic copy of the national electrical code ((as approved by the American Standards Association, and an authentic copy of any applicable regulations and standards of the Underwriters' Laboratories, Inc., or other electrical product testing laboratory which is accredited by the department prescribing rules, regulations, and standards for electrical materials, devices, appliances, and equipment, including any modifications and changes that have been made during the previous year in the rules, regulations, and standards)), latest revision. The

department, after consulting with the board and receiving the board's recommendations, shall adopt reasonable rules in furtherance of safety to life and property. All rules shall be kept on file by the department. Compliance with the rules shall be prima facie evidence of compliance with this chapter. The department upon request shall deliver to all persons, firms, partnerships, corporations, or other entities licensed under this chapter a copy of the rules.

(2) The department shall also obtain and keep on file an authentic copy of any applicable regulations and standards of any electrical product testing laboratory which is accredited by the department prescribing rules, regulations, and standards for electrical materials, devices, appliances, and equipment, including any modifications and changes that have been made during the previous year.

Passed the Senate March 15, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

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## CHAPTER 276

[Substitute Senate Bill 5957]

### MEDICAID TAX ON INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

**Effective Date:** To become effective on a date which is to be certified by the secretary of social and health services

AN ACT Relating to the tax on intermediate care facilities for the mentally retarded; amending RCW 82.65A.030; and declaring an emergency.

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

**Sec. 1.** RCW 82.65A.030 and 1992 c 80 s 3 are each amended to read as follows:

In addition to any other tax, a tax is imposed on every intermediate care facility for the mentally retarded for the act or privilege of engaging in business within this state. The tax is equal to the gross income attributable to services for the mentally retarded, multiplied by the rate of (~~fifteen~~) six percent.

**NEW SECTION.** **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on such date as shall be certified by the secretary of social and health services by which states must modify health care related taxes to prevent the loss of federal medicaid participation in the cost of the tax.

Passed the Senate April 14, 1993.  
 Passed the House April 18, 1993.  
 Approved by the Governor May 7, 1993.  
 Filed in Office of Secretary of State May 7, 1993.

**CHAPTER 277**

[Substitute House Bill 1686]

**ADMINISTRATIVE RULES REVIEW COMMITTEE AUTHORITY EXPANDED**

**Effective Date: 7/25/93**

AN ACT Relating to administrative law; and amending RCW 34.05.630 and 34.05.640.

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

**Sec. 1.** RCW 34.05.630 and 1988 c 288 s 603 are each amended to read as follows:

(1) All rules required to be filed pursuant to RCW 34.05.380, and emergency rules adopted pursuant to RCW 34.05.350, are subject to selective review by the legislature.

(2) The rules review committee may review an agency's use of policy statements, guidelines, and issuances that are of general applicability, or their equivalents to determine whether or not an agency has failed to adopt a rule or whether they are within the intent of the legislature as expressed by the governing statute.

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, ~~((c))~~ (c) that an agency is using a policy statement, guideline, or issuance in place of a rule, or (d) that the policy statement, guideline, or issuance is outside of legislative intent, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in RCW 34.05.320. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, ~~((c))~~ (c) whether the agency is using a policy statement, guideline, or issuance in place of a rule, or (d) whether the policy statement, guideline, or issuance is within the legislative intent.

**Sec. 2.** RCW 34.05.640 and 1988 c 288 s 604 are each amended to read as follows:

(1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules. If the rules review committee determines, by a majority vote of its members, that the agency has failed to provide for the required hearings or notice of its action to the committee, the committee may file notice of its objections, together with a concise statement of the reasons therefor, with the code reviser within thirty days of such determination.

(2) If the rules review committee finds, by a majority vote of its members: (a) That the proposed or existing rule in question has not been modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, or (b) that the agency is using a policy statement, guideline, or issuance in place of a rule, or that the policy statement, guideline, or issuance is outside of the legislative intent, the rules review committee may, within thirty days from notification by the agency of its action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3) If the rules review committee makes an adverse finding under subsection (2) of this section, the committee may, by a two-thirds vote of its members, recommend suspension of an existing rule. Within seven days of such vote the committee shall transmit to the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(4) The code reviser shall publish transmittals from the rules review committee or the governor issued pursuant to subsection (1), (2), or (3) of this section in the Washington state register and shall publish in the next supplement and compilation of the Washington Administrative Code a reference to the committee's objection or recommended suspension and the governor's action on it and to the issue of the Washington state register in which the full text thereof appears.

(5) The reference shall be removed from a rule published in the Washington Administrative Code if a subsequent adjudicatory proceeding determines that the rule is within the intent of the legislature or was adopted in accordance with all applicable laws, whichever was the objection of the rules review committee.

Passed the House March 15, 1993.  
Passed the Senate April 13, 1993.  
Approved by the Governor May 10, 1993.  
Filed in Office of Secretary of State May 10, 1993.

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**CHAPTER 278**

[House Bill 2119]

**PROFESSIONAL ATHLETIC COMMISSION ABOLISHED****Effective Date: 7/1/93**

AN ACT Relating to abolition of the state professional athletic commission; amending RCW 67.08.002, 67.08.007, 67.08.010, 67.08.015, 67.08.030, 67.08.040, 67.08.050, 67.08.055, 67.08.060, 67.08.080, 67.08.090, 67.08.100, 67.08.110, 67.08.120, 67.08.130, 67.08.140, and 67.08.170; adding a new section to chapter 67.08 RCW; creating new sections; repealing RCW 67.08.001, 67.08.003, 67.08.005, and 67.08.009; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The state professional athletic commission is hereby abolished and its powers, duties, and functions are hereby transferred to the department of licensing. All references to the director or state professional athletic commission in the Revised Code of Washington shall be construed to mean the director or department of licensing.

**NEW SECTION. Sec. 2.** All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state professional athletic commission shall be delivered to the custody of the department of licensing. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state professional athletic commission shall be made available to the department of licensing. All funds, credits, or other assets held by the state professional athletic commission shall be assigned to the department of licensing.

Any appropriations made to the state professional athletic commission shall, on the effective date of this section, be transferred and credited to the department of licensing.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

**NEW SECTION. Sec. 3.** All employees of the state professional athletic commission are transferred to the jurisdiction of the department of licensing. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of licensing to perform their usual duties upon the

same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

**NEW SECTION. Sec. 4.** All rules and all pending business before the state professional athletic commission shall be continued and acted upon by the department of licensing. All existing contracts and obligations shall remain in full force and shall be performed by the department of licensing.

**NEW SECTION. Sec. 5.** The transfer of the powers, duties, functions, and personnel of the state professional athletic commission shall not affect the validity of any act performed prior to the effective date of this section.

**NEW SECTION. Sec. 6.** If apportionments of budgeted funds are required because of the transfers directed by sections 2 through 5 of this act, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**NEW SECTION. Sec. 7.** Nothing contained in sections 1 through 6 of this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

**Sec. 8.** RCW 67.08.002 and 1989 c 127 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Boxing" includes, but is not limited to, sumo, judo, and karate in addition to fisticuffs, but does not include professional wrestling.

(2) (~~"Commission"~~) "Department" means the (~~professional-athletic commission~~) department of licensing.

(3) "Director" means the director of the department of licensing.

(4) "Promoter" means any person and, in the case of a corporation, an officer, director, employee, or shareholder thereof, who produces, arranges, or stages any professional wrestling exhibition or boxing contest.

~~((4))~~ (5) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

**Sec. 9.** RCW 67.08.007 and 1959 c 305 s 2 are each amended to read as follows:

The (~~commission~~) department may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended.

**Sec. 10.** RCW 67.08.010 and 1989 c 127 s 13 are each amended to read as follows:

The ~~((commission))~~ department shall have power to issue and for cause to revoke a license to conduct boxing contests, sparring matches, or wrestling shows or exhibitions including a simultaneous telecast of any live, current or spontaneous boxing, sparring or wrestling match or performance on a closed circuit telecast within this state, whether originating in this state or elsewhere, and for which a charge is made, as herein provided under such terms and conditions and at such times and places as the ~~((commission))~~ department may determine. Such licenses shall entitle the holder thereof to conduct boxing contests and sparring and/or wrestling matches and exhibitions under such terms and conditions and at such times and places as the ~~((commission))~~ department may determine. In case the ~~((commission))~~ department shall refuse to grant a license to any applicant, or shall cancel any license, such applicant, or the holder of such canceled license shall be entitled, upon application, to a hearing to be held not less than sixty days after the filing of such order at such place as the ~~((commission))~~ department may designate: PROVIDED, HOWEVER, That if it has been found by a valid finding and such finding is fully set forth in such order, that the applicant or licensee has been guilty of disobeying any provision of this chapter, such hearing shall be denied.

**NEW SECTION. Sec. 11.** A new section is added to chapter 67.08 RCW to read as follows:

The director has the following authority in administering this chapter:

- (1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;
- (2) Issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;
- (3) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;
- (4) Compel attendance of witnesses at hearings;
- (5) In the course of investigating a complaint or report of unprofessional conduct, conduct practice reviews;
- (6) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;
- (7) Use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;
- (8) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;
- (9) Adopt standards of professional conduct or practice;
- (10) In the event of a finding of unprofessional conduct by an applicant or license holder, impose sanctions against a license applicant or license holder as provided by this chapter;



(11) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) Designate individuals authorized to sign subpoenas and statements of charges;

(13) Employ the investigative, administrative, and clerical staff necessary for the enforcement of this chapter; and

(14) Compel the attendance of witnesses at hearings.

**Sec. 12.** RCW 67.08.015 and 1989 c 127 s 14 are each amended to read as follows:

The ~~((commission))~~ department shall have power and it shall be its duty to direct, supervise, and control all boxing contests, sparring matches, and wrestling shows or exhibitions conducted within the state and no such boxing contest, sparring match, or wrestling show or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The ~~((commission))~~ department may, in its discretion, issue and for cause revoke a license to conduct, hold or give boxing and sparring contests, and wrestling shows and exhibitions where an admission fee is charged by any club, corporation, organization, association, or fraternal society: **PROVIDED, HOWEVER,** That all boxing contests, sparring or wrestling matches or exhibitions which:

(1) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(2) Are entirely amateur events promoted on a nonprofit basis or for charitable purposes; shall not be subject to the provisions of this chapter: **PROVIDED, FURTHER,** That every contestant in any boxing contest or sparring match not conducted under the provisions of this chapter, prior to engaging in any such contest or match, shall be examined by a practicing physician at least once in each calendar year or, where such contest is conducted by a common school, college or university as further described in this section, once in each academic year in which instance such physician shall also designate the maximum and minimum weights at which such contestant shall be medically certified to participate: **PROVIDED FURTHER,** That no contestant shall be permitted to participate in any such boxing contest, sparring or wrestling match or exhibition in any weight classification other than that or those for which he is certificated: **PROVIDED FURTHER,** That the organizations exempted by this section from the provisions of this chapter shall be governed by RCW 67.08.080 as said section applies to boxing contests or sparring matches or exhibitions conducted by organizations exempted by this section from the general provisions

of this chapter. No boxing contest, sparring match, or wrestling show or exhibition shall be conducted within the state except pursuant to a license issued in accordance with the provisions of this chapter and the rules and regulations of the ((~~commission~~)) department except as hereinabove provided.

**Sec. 13.** RCW 67.08.030 and 1989 c 127 s 6 are each amended to read as follows:

(1) Every boxing promoter, as a condition for receiving a license, shall file a good and sufficient bond in the sum of ten thousand dollars with the ((~~commission~~)) department, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules and regulations of the ((~~commission~~)) department, which bond shall be subject to the approval of the attorney general.

(2) Every promoter of a wrestling exhibition or closed circuit telecast as a condition of receiving a license as provided for under this chapter shall file a good and sufficient bond in the sum of one thousand dollars with the ((~~commission~~)) department in cities of less than one hundred fifty thousand inhabitants and of two thousand five hundred dollars in cities of more than one hundred fifty thousand inhabitants conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes and officials provided for herein and the observance of all rules and regulations of the ((~~commission~~)) department, which bond shall be subject to the approval of the attorney general.

(3) Boxing promoters must obtain medical insurance to cover any injuries incurred by participants at the time of the event.

**Sec. 14.** RCW 67.08.040 and 1975-'76 2nd ex.s. c 48 s 4 are each amended to read as follows:

Upon the approval by the ((~~commission~~)) department of any application for a license, as hereinabove provided, and the filing of the bond the ((~~commission~~)) department shall forthwith issue such license.

**Sec. 15.** RCW 67.08.050 and 1989 c 127 s 7 are each amended to read as follows:

(1) Any promoter as herein provided shall within seven days prior to the holding of any boxing contest or sparring match or exhibition file with the ((~~commission~~)) department a statement setting forth the name of each licensee, his or her manager or managers and such other information as the ((~~commission~~)) department may require. Any promoter shall, within seven days before holding any wrestling exhibition or show, file with the ((~~commission~~)) department a statement setting forth the name of each contestant, his or her manager or managers, and such other information as the ((~~commission~~)) department may require. Participant changes within a twenty-four hour period regarding a wrestling exhibition or show may be allowed after notice to the ((~~commission~~)) department, if the new participant holds a valid license under this chapter. The ((~~commission~~)) department may stop any event that is a part of

a wrestling exhibition wherein any participant is not licensed under this chapter. Upon the termination of any contest or exhibition the promoter shall file with the designated ((~~commission~~)) department representative a written report, duly verified as the ((~~commission~~)) department may require showing the number of tickets sold for such contest, the price charged for such tickets and the gross proceeds thereof, and such other and further information as the ((~~commission~~)) department may require. The promoter shall pay to the ((~~commission~~)) department at the time of filing the above report a tax equal to five percent of such gross receipts and said five percent of such gross receipts shall be immediately paid by the ((~~commission~~)) department into the state general fund.

(2) The number of complimentary tickets shall be limited to two percent of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation.

**Sec. 16.** RCW 67.08.055 and 1989 c 127 s 15 are each amended to read as follows:

Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the ((~~commission~~)) department a verified written report on a form which is supplied by the ((~~commission~~)) department showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the ((~~commission~~)) department a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the ((~~commission~~)) department into the general fund of the state.

**Sec. 17.** RCW 67.08.060 and 1989 c 127 s 16 are each amended to read as follows:

The ((~~commission~~)) department may appoint official inspectors at least one of which, in the absence of a member of the ((~~commission~~)) department, shall be present at any boxing contest or sparring match or exhibition held under the provisions of this chapter and may be present at any wrestling exhibition or show. Such inspectors shall carry a card signed by the ((~~chairman~~)) director of the ((~~commission~~)) department evidencing their authority. It shall be their duty to see that all rules and regulations of the ((~~commission~~)) department and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any contest, and such inspector is authorized to receive from the licensee conducting the contest the statement of receipts herein provided for and to immediately transmit such reports to the ((~~commission~~)) department. Each inspector shall receive a fee from the licensee to be set by the ((~~commission~~)) department for each contest officially attended. Each

inspector shall also receive from the state travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

**Sec. 18.** RCW 67.08.080 and 1989 c 127 s 8 are each amended to read as follows:

No boxing contest or sparring exhibition held in this state whether under the provisions of this chapter or otherwise shall be for more than ten rounds and no one round of any such contest or exhibition shall be scheduled for less than or longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state or regional championships the ~~((commission))~~ department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds, and in bouts involving national championships the ~~((commission))~~ department may grant an extension of no more than five additional rounds to allow total bouts of fifteen rounds. No contestant in any boxing contest or sparring match or exhibition whether under this chapter or otherwise shall be permitted to wear gloves weighing less than eight ounces. The ~~((commission))~~ department shall promulgate rules and regulations to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the contest in all respects, and to otherwise make rules and regulations consistent with this chapter, but such rules and regulations shall apply only to contests held under the provisions of this chapter.

**Sec. 19.** RCW 67.08.090 and 1989 c 127 s 9 are each amended to read as follows:

Each contestant for boxing or sparring shall be examined within eight hours prior to the contest by a competent physician appointed by the ~~((commission))~~ department. The physician shall forthwith and before such contest report in writing and over his or her signature the physical condition of each and every contestant to the ~~((commissioner or))~~ inspector present at such contest. No contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest. Blank forms of physicians' report shall be provided by the ~~((commission))~~ department and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee designated by the ~~((commission))~~ department by the promoter conducting such match or exhibition. The ~~((commission))~~ department may have a participant in a wrestling exhibition or show examined by a physician appointed by the ~~((commission))~~ department prior to the exhibition or show. A participant in a wrestling exhibition or show whose condition is not approved by the examining physician shall not be permitted to participate in the exhibition or show. No boxing contest, sparring match, or exhibition shall be held unless a licensed physician of the ~~((commission))~~ department or his or her duly appointed representative is present throughout the contest. The ~~((commission))~~ department may require that a physician be present at a wrestling exhibition or show. Any

physician present at a wrestling show or exhibition shall be paid for by the promoter.

Any practicing physician and surgeon may be selected by the ~~((board))~~ department as the examining physician. Such physician present at such contest shall have authority to stop any contest when in the physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the physician's duty to stop such contest.

**Sec. 20.** RCW 67.08.100 and 1989 c 127 s 10 are each amended to read as follows:

(1) The ~~((commission))~~ department may grant annual licenses upon application in compliance with the rules and regulations prescribed by the ~~((commission))~~ director, and the payment of the fees, the amount of which is to be ~~((determined))~~ set by the ~~((commission))~~ director in accordance with RCW 43.24.086, prescribed to promoters, managers, referees, boxers, wrestlers, and seconds: PROVIDED, That the provisions of this section shall not apply to contestants or participants in strictly amateur contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any bona fide athletic club which is a member of the Pacific northwest association of the amateur athletic union of the United States, holding and promoting athletic contests and where all funds are used primarily for the benefit of their members.

(2) Any such license may be revoked by the ~~((commission))~~ department for any cause which it shall deem sufficient.

(3) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(4) The referee for any boxing contest shall be designated by the ~~((commission))~~ department from among such licensed referees.

(5) The referee for any wrestling exhibition or show shall be provided by the promoter and licensed by the ~~((commission))~~ department.

**Sec. 21.** RCW 67.08.110 and 1989 c 127 s 11 are each amended to read as follows:

Any person or any member of any group of persons or corporation promoting boxing exhibitions or contests who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing contest or sparring match or exhibition shall thereby forfeit its license and the ~~((commission))~~ department shall declare such license canceled and void and such licensee shall not thereafter be entitled to receive another such, or any license issued pursuant to the provisions of this chapter.

**Sec. 22.** RCW 67.08.120 and 1989 c 127 s 12 are each amended to read as follows:

Any contestant or licensee who shall participate in any sham or fake boxing contest, match, or exhibition and any licensee or participant who violates any

rule or regulation of the (~~(commission)~~) department shall be penalized in the following manner: For the first offense he or she shall be restrained by order of the (~~(commission)~~) department for a period of not less than three months from participating in any contest held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense; for any second offense such contestant shall be forever suspended from participation in any contest held under the provisions of this chapter.

**Sec. 23.** RCW 67.08.130 and 1933 c 184 s 19 are each amended to read as follows:

Whenever any licensee shall fail to make a report of any contest within the time prescribed by this chapter or when such report is unsatisfactory to the (~~(commission)~~) department, the (~~(secretary)~~) director shall examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any contest and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, and if such licensee shall fail to pay such additional tax within twenty days after service of such notice such delinquent licensee shall forfeit its license and shall forever be disqualified from receiving any new license and in addition thereto such licensee and the members thereof shall be jointly and severally liable to this state in the penal sum of one thousand dollars to be collected by the attorney general by civil action in the name of the state in the manner provided by law.

**Sec. 24.** RCW 67.08.140 and 1989 c 127 s 17 are each amended to read as follows:

Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing contests, sparring matches, or wrestling shows or exhibitions within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting such contests excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the (~~(commission)~~) department, or any citizen of any county where any person, club, corporation, organization, association, fraternal society, promoter, or participant shall threaten to hold, or appears likely to hold or participate in athletic contests or exhibitions in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, fraternal society, promoter, or participant from holding or participating in such contest or exhibition.

**Sec. 25.** RCW 67.08.170 and 1989 c 127 s 3 are each amended to read as follows:

A promoter shall ensure that adequate security personnel are in attendance at a wrestling exhibition or boxing contest to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the ~~((commission))~~ department.

**NEW SECTION. Sec. 26.** The following acts or parts of acts are each repealed:

- (1) RCW 67.08.001 and 1989 c 127 s 5, 1988 c 19 s 1, 1981 c 337 s 1, & 1933 c 184 s 1;
- (2) RCW 67.08.003 and 1984 c 287 s 99 & 1977 c 9 s 1;
- (3) RCW 67.08.005 and 1981 c 337 s 2 & 1933 c 184 s 3; and
- (4) RCW 67.08.009 and 1933 c 184 s 5.

**NEW SECTION. Sec. 27.** 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. 28.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 17, 1993.  
 Passed the Senate April 18, 1993.  
 Approved by the Governor May 10, 1993.  
 Filed in Office of Secretary of State May 10, 1993.

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## CHAPTER 279

[Substitute Senate Bill 5634]

### INTERAGENCY DISPUTES—USE OF ALTERNATIVE DISPUTE RESOLUTION METHODS REQUIRED

**Effective Date:** 7/25/93

AN ACT Relating to disputes between state agencies; adding new sections to chapter 43.17 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** It is the intent of the legislature to reduce the number of time-consuming and costly lawsuits between state agencies by establishing alternative dispute resolution processes available to any agency.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.17 RCW to read as follows:

For purposes of sections 2 through 4 of this act, "state agency" means:

- (1) Any agency for which the executive officer is listed in RCW 42.17.2401(1); and
- (2) The office of the secretary of state; the office of the state treasurer; the office of the state auditor; the department of natural resources; the office of the

insurance commissioner; and the office of the superintendent of public instruction.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 43.17 RCW to read as follows:

Whenever a dispute arises between state agencies, agencies shall employ every effort to resolve the dispute themselves without resorting to litigation. These efforts shall involve alternative dispute resolution methods. If a dispute cannot be resolved by the agencies involved, any one of the disputing agencies may request the governor to assist in the resolution of the dispute. The governor shall employ whatever dispute resolution methods that the governor deems appropriate in resolving the dispute. Such methods may include, but are not limited to, the appointment by the governor of a mediator, acceptable to the disputing agencies, to assist in the resolution of the dispute. The governor may also request assistance from the attorney general to advise the mediator and the disputing agencies.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 43.17 RCW to read as follows:

Sections 2 and 3 of this act shall not apply to any state agency that is a party to a lawsuit, which: (1) Impleads another state agency into the lawsuit when necessary for the administration of justice; or (2) files a notice of appeal, petitions for review, or makes other filings subject to time limits, in order to preserve legal rights and remedies.

Passed the Senate April 18, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 10, 1993.

Filed in Office of Secretary of State May 10, 1993.

## CHAPTER 280

[Engrossed Substitute Senate Bill 5868]

### DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

**Effective Date:** 7/25/93 - Except Sections 80 & 81 which become effective on 5/10/93; Sections 1 through 7 & 9 through 79, 82 & 83 which become effective on 7/1/94

AN ACT Relating to consolidation of state agencies; amending RCW 28C.18.060, 43.17.010, 43.17.020, 19.85.020, 42.17.319, 43.17.065, 43.20A.750, 43.31.057, 43.31.085, 43.31.205, 43.31.409, 43.31.411, 43.31.422, 43.31.504, 43.31.522, 43.31.524, 43.31.526, 43.31.621, 43.31.641, 43.31.651, 43.31.800, 43.31.830, 43.31.840, 43.160.020, 43.168.020, 43.210.110, 43.63A.066, 43.63A.075, 43.63A.115, 43.63A.155, 43.63A.220, 43.63A.230, 43.63A.245, 43.63A.247, 43.63A.260, 43.63A.275, 43.63A.300, 43.63A.320, 43.63A.330, 43.63A.340, 43.63A.400, 43.63A.410, 43.63A.440, 43.63A.450, 43.63A.460, 43.63A.600, 43.105.020, 43.31.091, and 43.31.092; reenacting and amending RCW 42.17.310; adding a new chapter to Title 43 RCW; creating new sections; repealing RCW 43.31.005, 43.31.015, 43.31.025, 43.31.035, 43.31.045, 43.31.055, 43.31.065, 43.31.075, 43.31.095, 43.31.097, 43.31.105, 43.31.115, 43.31.130, 43.31.135, 43.31.373, 43.31.375, 43.31.377, 43.31.379, 43.31.381, 43.31.383, 43.31.387, 43.31.430, 43.31.432, 43.31.434, 43.31.436, 43.31.438, 43.31.440, 43.31.442, 43.31.790, 43.63A.020, 43.63A.030, 43.63A.040, 43.63A.050, 43.63A.060, 43.63A.065, 43.63A.078, 43.63A.095, 43.63A.100, 43.63A.130, 43.63A.140,



43.63A.210, 43.63A.560, 43.165.020, 43.165.030, 43.165.040, 43.165.050, 43.165.060, 43.165.070, 43.165.080, 43.165.090, 43.165.100, 43.165.900, and 43.165.901; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1. INTENT.** The legislature finds that the long-term economic health of the state and its citizens depends upon the strength and vitality of its communities and businesses. It is the intent of this chapter to create a merged department of community, trade, and economic development that fosters new partnerships for strong and sustainable communities. The consolidation of the department of trade and economic development and the department of community development into one department will: Streamline access to services by providing a simpler point of entry for state programs; provide focused and flexible responses to changing economic conditions; generate greater local capacity to respond to both economic growth and environmental challenges; and increase accountability to the public, the executive branch, and the legislature.

A new department can bring together a focused effort to: Manage growth and achieve sustainable development; diversify the state's economy and export goods and services; provide greater access to economic opportunity; stimulate private sector investment and entrepreneurship; provide stable family-wage jobs and meet the diverse needs of families; provide affordable housing and housing services; construct public infrastructure; protect our cultural heritage; and promote the health and safety of the state's citizens.

The legislature further finds that as a result of the rapid pace of global social and economic change, the state and local communities will require coordinated and creative responses by every segment of the community. The state can play a role in assisting such local efforts by reorganizing state assistance efforts to promote such partnerships. The department has a primary responsibility to provide financial and technical assistance to the communities of the state, to assist in improving the delivery of federal, state, and local programs, and to provide communities with opportunities for productive and coordinated development beneficial to the well-being of communities and their residents. It is the intent of the legislature in this consolidation to maximize the use of local expertise and resources in the delivery of community and economic development services.

**NEW SECTION.** **Sec. 2. MANAGEMENT RESPONSIBILITY.** The purpose of this chapter is to establish the broad outline of the structure of the department of community, trade, and economic development, leaving specific details of its internal organization and management to those charged with its administration. This chapter identifies the broad functions and responsibilities of the new department and is intended to provide flexibility to the director to reorganize these functions and to make recommendations for changes through the implementation plan required in section 8 of this act.

NEW SECTION. **Sec. 3. DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Associate development organization" means a local economic development nonprofit corporation that is broadly representative of community interests.

(2) "Department" means the department of community, trade, and economic development.

(3) "Director" means the director of the department of community, trade, and economic development.

NEW SECTION. **Sec. 4. DEPARTMENT CREATED.** A department of community, trade, and economic development is created. The department shall be vested with all powers and duties established or transferred to it under this chapter and such other powers and duties as may be authorized by law. Unless otherwise specifically provided in chapter . . . , Laws of 1993 (this act), the existing responsibilities and functions of the agency programs will continue to be administered in accordance with their implementing legislation.

NEW SECTION. **Sec. 5. DIRECTOR'S APPOINTMENT.** The executive head of the department shall be the director. The director shall be appointed by the governor with the consent of the senate, and shall serve at the pleasure of the governor. The director shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040.

NEW SECTION. **Sec. 6. DIRECTOR'S RESPONSIBILITIES.** (1) The director shall supervise and administer the activities of the department and shall advise the governor and the legislature with respect to community and economic development matters affecting the state.

(2) In addition to other powers and duties granted to the director, the director shall have the following powers and duties:

(a) Enter into contracts on behalf of the state to carry out the purposes of this chapter;

(b) Act for the state in the initiation of or participation in any multigovernmental program relative to the purpose of this chapter;

(c) Accept and expend gifts and grants, whether such grants be of federal or other funds;

(d) Appoint such deputy directors, assistant directors, and up to seven special assistants as may be needed to administer the department. These employees are exempt from the provisions of chapter 41.06 RCW;

(e) Prepare and submit budgets for the department for executive and legislative action;

(f) Submit recommendations for legislative actions as are deemed necessary to further the purposes of this chapter;

(g) Adopt rules in accordance with chapter 34.05 RCW and perform all other functions necessary and proper to carry out the purposes of this chapter;

(h) Delegate powers, duties, and functions as the director deems necessary for efficient administration, but the director shall be responsible for the official acts of the officers and employees of the department; and

(i) Perform other duties as are necessary and consistent with law.

(3) When federal or other funds are received by the department, they shall be promptly transferred to the state treasurer and thereafter expended only upon the approval of the director.

(4) The director may request information and assistance from all other agencies, departments, and officials of the state, and may reimburse such agencies, departments, or officials if such a request imposes any additional expenses upon any such agency, department, or official.

(5) The director shall, in carrying out the responsibilities of office, consult with governmental officials, private groups, and individuals and with officials of other states. All state agencies and their officials and the officials of any political subdivision of the state shall cooperate with and give such assistance to the department, including the submission of requested information, to allow the department to carry out its purposes under this chapter.

(6) The director may establish additional advisory or coordinating groups with the legislature, within state government, with state and other governmental units, with the private sector and nonprofit entities or in specialized subject areas as may be necessary to carry out the purposes of this chapter.

(7) The internal affairs of the department shall be under the control of the director in order that the director may manage the department in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the director shall have complete charge and supervisory powers over the department. The director may create such administrative structures as the director deems appropriate, except as otherwise specified by law, and the director may employ such personnel as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law.

**NEW SECTION.** Sec. 7. DEPARTMENT RESPONSIBILITIES. The department shall be responsible for promoting community and economic development within the state by assisting the state's communities to increase the quality of life of their citizens and their economic vitality, and by assisting the state's businesses to maintain and increase their economic competitiveness, while maintaining a healthy environment. Community and economic development efforts shall include: Efforts to increase economic opportunity; local planning to manage growth; the promotion and provision of affordable housing and housing-related services; providing public infrastructure; business and trade development; assisting firms and industrial sectors to increase their competitiveness; fostering the development of minority and women-owned businesses; facilitating technology development, transfer, and diffusion; community services and advocacy for low-income persons; and public safety efforts. The department shall have the following general functions and responsibilities:

(1) Provide advisory assistance to the governor, other state agencies, and the legislature on community and economic development matters and issues;

(2) Assist the governor in coordinating the activities of state agencies that have an impact on local government and communities;

(3) Cooperate with the legislature and the governor in the development and implementation of strategic plans for the state's community and economic development efforts;

(4) Solicit private and federal grants for economic and community development programs and administer such programs in conjunction with other programs assigned to the department by the governor or the legislature;

(5) Cooperate with and provide technical and financial assistance to local governments, businesses, and community-based organizations serving the communities of the state for the purpose of aiding and encouraging orderly, productive, and coordinated development of the state, and, unless stipulated otherwise, give additional consideration to local communities and individuals with the greatest relative need and the fewest resources;

(6) Participate with other states or subdivisions thereof in interstate programs and assist cities, counties, municipal corporations, governmental conferences or councils, and regional planning commissions to participate with other states and provinces or their subdivisions;

(7) Hold public hearings and meetings to carry out the purposes of this chapter;

(8) Conduct research and analysis in furtherance of the state's economic and community development efforts including maintenance of current information on market, demographic, and economic trends as they affect different industrial sectors, geographic regions, and communities with special economic and social problems in the state; and

(9) Develop a schedule of fees for services where appropriate.

NEW SECTION. Sec. 8. IMPLEMENTATION PLAN. (1) The director of the department of trade and economic development and the director of the department of community development shall, by November 15, 1993, jointly submit a plan to the governor for the consolidation and smooth transition of the department of trade and economic development and the department of community development into the department of community, trade, and economic development so that the department will operate as a single entity on July 1, 1994.

(2) The plan shall include, but is not limited to, the following elements:

(a) Strategies for combining the existing functions and responsibilities of both agencies into a coordinated and unified department including a strategic plan for each major program area that includes implementation steps, evaluation measures, and methods for collaboration among programs;

(b) Recommendations for any changes in existing programs and functions of both agencies, including new initiatives and possible transfer of programs and functions to and from other departments;

(c) Implementation steps necessary to bring about operation of the combined department as a single entity;

(d) Benchmarks by which to measure progress and to evaluate the performance and effectiveness of the department's efforts; and

(e) Strategies for coordinating and maximizing federal, state, local, international, and private sector support for community and economic development efforts within the state.

(3) In developing this plan, the directors shall establish an advisory committee of representatives of groups using services and programs of both departments. The advisory committee shall include representatives of cities, counties, port districts, small and large businesses, labor unions, associate development organizations, low-income housing interests, housing industry, Indian tribes, community action programs, public safety groups, nonprofit community and development organizations, international trade organizations, minority and women business organizations, and any other organizations the directors determine should have input to the plan.

**NEW SECTION. Sec. 9. TRADE AND BUSINESS ASSISTANCE.** (1) The department shall assist in expanding the state's role as an international center of trade, culture, and finance. The department shall promote and market the state's products and services internationally in close cooperation with other private and public international trade efforts and act as a centralized location for the assimilation and distribution of trade information.

(2) The department shall identify and work with Washington businesses that can use local, state, and federal assistance to increase domestic and foreign exports of goods and services.

(3) The department shall work generally with small businesses and other employers to facilitate resolution of siting, regulatory, expansion, and retention problems. This assistance shall include but not be limited to assisting in work force training and infrastructure needs, identifying and locating suitable business sites, and resolving problems with government licensing and regulatory requirements. The department shall identify gaps in needed services and develop steps to address them including private sector support and purchase of these services.

(4) The department shall work to increase the availability of capital to small businesses by developing new and flexible investment tools and by assisting in targeting and improving the efficiency of existing investment mechanisms.

(5) The department shall assist women and minority-owned businesses in overcoming barriers to increased investment and employment and becoming full participants in Washington's traded sector economy.

**NEW SECTION. Sec. 10. LOCAL DEVELOPMENT CAPACITY—BUILDING AND TECHNICAL ASSISTANCE.** (1) The department shall work closely with local communities to increase their capacity to respond to economic, environmental, and social problems and challenges. The department shall

coordinate the delivery of development services and technical assistance to local communities or regional areas. It shall promote partnerships between the public and private sectors and between state and local officials to encourage appropriate economic growth and opportunity in communities throughout the state. The department shall promote appropriate local development by: Supporting the ability of communities to develop and implement strategic development plans; assisting businesses to start up, maintain, or expand their operations; encouraging public infrastructure investment and private and public capital investment in local communities; supporting efforts to manage growth and provide affordable housing and housing services; providing for the identification and preservation of the state's historical and cultural resources; and expanding employment opportunities.

(2) The department shall define a set of services including training and technical assistance that it will make available to local communities, community-based nonprofit organizations, regional areas, or businesses. The department shall simplify access to these programs by providing more centralized and user-friendly information and referral. The department shall coordinate community and economic development efforts to minimize program redundancy and maximize accessibility. The department shall develop a set of criteria for targeting services to local communities.

(3) The department shall develop a coordinated and systematic approach to providing training to community-based nonprofit organizations, local communities, and businesses. The approach shall be designed to increase the economic and community development skills available in local communities by providing training and funding for training for local citizens, nonprofit organizations, and businesses. The department shall emphasize providing training in those communities most in need of state assistance.

**NEW SECTION. Sec. 11. LOCAL AND REGIONAL DEVELOPMENT CONTRACTS.** (1) The department may contract with associate development organizations or other local organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The organizations contracted with in each community or regional area shall be broadly representative of community and economic interests. The organization shall be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives. The contracting organization shall work with and include local governments, local chambers of commerce, private industry councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups. The department shall be responsible for determining the scope of services delivered under these contracts.

(2) Associate development organizations or other local development organizations contracted with shall promote and coordinate, through local service

agreements with local governments, small business development centers, port districts, community and technical colleges, private industry councils, and other development organizations, for the efficient delivery of community and economic development services in their areas.

(3) The department shall consult with associate development organizations, port districts, local governments, and other local development organizations in the establishment of service delivery regions throughout the state. The legislature encourages local associate development organizations to form partnerships with other associate development organizations in their region to combine resources for better access to available services, to encourage regional delivery of state services, and to build the local capacity of communities in the region more effectively.

(4) The department shall contract on a regional basis for surveys of key sectors of the regional economy and the coordination of technical assistance to businesses and employees within the key sectors. The department's selection of contracting organizations or consortiums shall be based on the sufficiency of the organization's or consortium's proposal to examine key sectors of the local economy within its region adequately and its ability to coordinate the delivery of services required by businesses within the targeted sectors. Organizations contracting with the department shall work closely with the department to examine the local economy and to develop strategies to focus on developing key sectors that show potential for long-term sustainable growth. The contracting organization shall survey businesses and employees in targeted sectors on a periodic basis to gather information on the sector's business needs, expansion plans, relocation decisions, training needs, potential layoffs, financing needs, availability of financing, and other appropriate information about economic trends and specific employer and employee needs in the region.

(5) The contracting organization shall participate with the work force training and education coordinating board as created in chapter 28C.18 RCW, and any regional entities designated by that board, in providing for the coordination of job skills training within its region.

**NEW SECTION. Sec. 12. ECONOMIC DIVERSIFICATION AND SECTORAL STRATEGIES.** (1) The department shall work with private sector organizations, local governments, local economic development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered in each

service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall ensure that the state continues to pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The department shall work to provide a balance of tourism activities throughout the state and during different seasons of the year. In addition, the department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state.

(3) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

(f) Promoting cooperative market development activities;

(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and

(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity.

By January 10th of each year, the department shall report in writing on its targeted sector programs to the appropriate legislative economic development committees. The department's report shall include an appraisal of the sector, activities the department has undertaken to assist in the development of each sector, and recommendations to the legislature regarding activities that the state should implement but are currently beyond the scope of the department's program or resources.

**NEW SECTION.** Sec. 13. LOCAL DEVELOPMENT FINANCE AND PUBLIC FACILITIES. (1) The department shall support the development and maintenance of local infrastructure and public facilities and provide local communities with flexible sources of funding. The department shall coordinate grant and loan programs that provide infrastructure and investment in local communities. This shall include coordinating funding for eligible projects with other federal, state, local, private, and nonprofit funding sources.

(2) At a minimum, the department shall provide coordinated procedures for applying for and tracking grants and loans among and between the community



economic revitalization board, the public works trust fund, and community development block grants.

**NEW SECTION. Sec. 14. HOUSING AFFORDABILITY.** (1) The department shall maintain an active effort to help communities, families, and individuals build and maintain capacity to meet housing needs in Washington state. The department shall facilitate partnerships among the many entities related to housing issues and leverage a variety of resources and services to produce comprehensive, cost-effective, and innovative housing solutions.

(2) The department shall assist in the production, development, rehabilitation, and operation of owner-occupied or rental housing for very low, low, and moderate-income persons; operate programs to assist home ownership, offer housing services, and provide emergency, transitional, and special needs housing services; and qualify as a participating state agency for all programs of the federal department of housing and urban development or its successor. The department shall develop or assist local governments in developing housing plans required by the state or federal government.

(3) The department shall coordinate and administer energy assistance and residential energy conservation and rehabilitation programs of the federal and state government through nonprofit organizations, local governments, and housing authorities.

**NEW SECTION. Sec. 15. GROWTH MANAGEMENT.** (1) The department shall serve as the central coordinator for state government in the implementation of the growth management act, chapter 36.70A RCW. The department shall work closely with all Washington communities planning for future growth and responding to the pressures of urban sprawl. The department shall ensure coordinated implementation of the growth management act by state agencies.

(2) The department shall offer technical and financial assistance to cities and counties planning under the growth management act. The department shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.

(3) The department shall provide alternative dispute resolution to jurisdictions and organizations to mediate disputes and to facilitate consistent implementation of the growth management act. The department shall review local governments compliance with the requirements of the growth management act and make recommendations to the governor.

**NEW SECTION. Sec. 16. COMMUNITY SERVICES AND PROTECTION.** (1) The department shall coordinate services to communities that are directed to the poor and disadvantaged through private and public nonprofit organizations and units of general purpose local governments. The department shall coordinate these programs using, to the extent possible, integrated case management methods, with other community and economic development efforts that promote self-sufficiency.

(2) These services may include, but not be limited to, comprehensive education services to preschool children from low-income families, providing for human service needs and advocacy, promoting volunteerism and citizen service as a means for accomplishing local community and economic development goals, coordinating and providing emergency food assistance to distribution centers and needy individuals, and providing for human service needs through community-based organizations.

(3) The department shall provide local communities and at-risk individuals with programs that provide community protection and assist in developing strategies to reduce substance abuse. The department shall administer programs that develop collaborative approaches to prevention, intervention, and interdiction programs. The department shall administer programs that support crime victims, address youth and domestic violence problems, provide indigent defense for low-income persons, border town disputes, and administer family services and programs to promote the state's policy as provided in RCW 74.14A.025.

(4) The department shall provide fire protection and emergency management services to support and strengthen local capacity for controlling risk to life, property, and community vitality that may result from fires, emergencies, and disasters.

**Sec. 17.** RCW 28C.18.060 and 1991 c 238 s 7 are each amended to read as follows:

The board, in cooperation with the operating agencies of the state training system shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system.

(2) Advocate for the state training system and for meeting the needs of employers and the work force for work force education and training.

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs.

(4) Develop and maintain a state comprehensive plan for work force training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for work force training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer

surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community.

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for work force training and education.

(6) Provide for coordination among the different operating agencies of the state training system at the state level and at the regional level.

(7) Develop a consistent and reliable data base on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state.

(8) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system.

The board shall develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system.

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation.

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system.

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations.

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system.

(13) Provide for effectiveness and efficiency reviews of the state training system.

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary work force education and two years of postsecondary work force education.

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system.

(16) Participate in the development of coordination criteria for activities under the job training partnership act with related programs and services provided by state and local education and training agencies.

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education.

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants.

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system.

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling.

(21) Facilitate programs for school-to-work transition that combine classroom education and on-the-job training in industries and occupations without a significant number of apprenticeship programs.

(22) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities.

(23) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended.

(24) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence.

(25) Allocate funding from the state job training trust fund.

(26) Work with the director of community, trade, and economic development to ensure coordination between work force training priorities and that department's economic development efforts.

(27) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section.

**Sec. 18.** RCW 43.17.010 and 1989 1st ex.s. c 9 s 810 are each amended to read as follows:

There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fisheries, (6) the department of wildlife, (7) the department of transportation, (8) the department of licensing, (9) the department of general administration, (10) the department of ~~((trade))~~ community, trade, and economic development, (11) the department of veterans affairs, (12) the department of revenue, (13) the department of retirement systems, (14) the department of corrections, and (15) ~~((the department of community development, and (16)))~~ the department of health, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide.

**Sec. 19.** RCW 43.17.020 and 1989 1st ex.s. c 9 s 811 are each amended to read as follows:

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fisheries, (6) the director of wildlife, (7) the secretary of transportation, (8) the director of licensing, (9) the director of general administration, (10) the director of ~~((trade))~~ community, trade, and economic development, (11) the director of veterans affairs, (12) the director of revenue, (13) the director of retirement systems, (14) the secretary of corrections, and (15) ~~((the director of community development, and (16)))~~ the secretary of health.

Such officers, except the secretary of transportation, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of wildlife, however, shall be appointed according to the provisions of RCW 77.04.080. If a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate. A temporary director of wildlife shall not serve more than one year. The secretary of transportation shall be appointed by the transportation commission as prescribed by RCW 47.01.041.

**NEW SECTION.** **Sec. 20.** The department of community development is hereby abolished and its powers, duties, and functions are hereby transferred to the department of community, trade, and economic development.

**NEW SECTION.** **Sec. 21.** All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of

community development shall be delivered to the custody of the department of community, trade, and economic development. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of community development shall be made available to the department of community, trade, and economic development. All funds, credits, or other assets held by the department of community development shall be assigned to the department of community, trade, and economic development.

Any appropriations made to the department of community development shall, on the effective date of this section, be transferred and credited to the department of community, trade, and economic development.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

NEW SECTION. **Sec. 22.** All employees of the department of community development are transferred to the jurisdiction of the department of community, trade, and economic development. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of community, trade, and economic development to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

NEW SECTION. **Sec. 23.** All rules and all pending business before the department of community development shall be continued and acted upon by the department of community, trade, and economic development. All existing contracts and obligations shall remain in full force and shall be performed by the department of community, trade, and economic development.

NEW SECTION. **Sec. 24.** The transfer of the powers, duties, functions, and personnel of the department of community development shall not affect the validity of any act performed prior to the effective date of this section.

NEW SECTION. **Sec. 25.** If apportionments of budgeted funds are required because of the transfers directed by sections 21 through 24 of this act, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

NEW SECTION. **Sec. 26.** Nothing contained in sections 20 through 25 of this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement

has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

**NEW SECTION. Sec. 27.** The department of trade and economic development is hereby abolished and its powers, duties, and functions are hereby transferred to the department of community, trade, and economic development.

**NEW SECTION. Sec. 28.** All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of trade and economic development shall be delivered to the custody of the department of community, trade, and economic development. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of trade and economic development shall be made available to the department of community, trade, and economic development. All funds, credits, or other assets held by the department of trade and economic development shall be assigned to the department of community, trade, and economic development.

Any appropriations made to the department of trade and economic development shall, on the effective date of this section, be transferred and credited to the department of community, trade, and economic development.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

**NEW SECTION. Sec. 29.** All employees of the department of trade and economic development are transferred to the jurisdiction of the department of community, trade, and economic development. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of community, trade, and economic development to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

**NEW SECTION. Sec. 30.** All rules and all pending business before the department of trade and economic development shall be continued and acted upon by the department of community, trade, and economic development. All existing contracts and obligations shall remain in full force and shall be performed by the department of community, trade, and economic development.

**NEW SECTION. Sec. 31.** The transfer of the powers, duties, functions, and personnel of the department of trade and economic development shall not affect the validity of any act performed prior to the effective date of this section.

**NEW SECTION. Sec. 32.** If apportionments of budgeted funds are required because of the transfers directed by sections 28 through 31 of this act, the director of financial management shall certify the apportionments to the

agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**NEW SECTION. Sec. 33.** Nothing contained in sections 27 through 32 of this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

**Sec. 34.** RCW 19.85.020 and 1989 c 374 s 1 are each amended to read as follows:

Unless the context clearly indicates otherwise, the definitions in this section apply through this chapter.

(1) "Small business" (~~has the meaning given in RCW 43.31.025(4))~~ means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

(3) "Industry" means all of the businesses in this state in any one three-digit standard industrial classification as published by the United States department of commerce.

**Sec. 35.** RCW 42.17.310 and 1992 c 139 s 5 and 1992 c 71 s 12 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.



(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.163 (~~RCW and chapters 43.31, 43.63A~~), 43.— (sections 1 through 7, 9 through 16, 79, and 83 of this act), and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or a rape crisis center as defined in RCW 70.125.030.

(cc) Information that identifies a person who, while an agency employee:

(i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice

under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(dd) Business related information protected from public inspection and copying under RCW 15.86.110.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

**Sec. 36.** RCW 42.17.319 and 1989 c 312 s 7 are each amended to read as follows:

Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, no financial or proprietary information supplied by investors or entrepreneurs under chapter ~~((42.34))~~ 43— RCW (sections 1 through 7, 9 through 16, 79, and 83 of this act) shall be made available to the public.

**Sec. 37.** RCW 43.17.065 and 1991 c 314 s 28 are each amended to read as follows:

(1) Where power is vested in a department to issue permits, licenses, certifications, contracts, grants, or otherwise authorize action on the part of individuals, businesses, local governments, or public or private organizations, such power shall be exercised in an expeditious manner. All departments with such power shall cooperate with officials of the business assistance center of the department of ~~((trade))~~ community, trade, and economic development, and any other state officials, when such officials request timely action on the part of the issuing department.

(2) After August 1, 1991, any agency to which subsection (1) of this section applies shall, with regard to any permits or other actions that are necessary for economic development in timber impact areas, as defined in RCW 43.31.601, respond to any completed application within forty-five days of its receipt; any response, at a minimum, shall include:

(a) The specific steps that the applicant needs to take in order to have the application approved; and

(b) The assistance that will be made available to the applicant by the agency to expedite the application process.

(3) The agency timber task force established in RCW 43.31.621 shall oversee implementation of this section.

(4) Each agency shall define what constitutes a completed application and make this definition available to applicants.

**Sec. 38.** RCW 43.20A.750 and 1992 c 21 s 4 are each amended to read as follows:

(1) The department of social and health services shall help families and workers in timber impact areas make the transition through economic difficulties and shall provide services to assist workers to gain marketable skills. The department, as a member of the agency timber task force and in consultation with the economic recovery coordination board, and, where appropriate, under an interagency agreement with the department of community, trade, and economic development, shall provide grants through the office of the secretary for services to the unemployed in timber impact areas, including providing direct or referral services, establishing and operating service delivery programs, and coordinating delivery programs and delivery of services. These grants may be awarded for family support centers, reemployment centers, or other local service agencies.

(2) The services provided through the grants may include, but need not be limited to: Credit counseling; social services including marital counseling; psychotherapy or psychological counseling; mortgage foreclosures and utilities problems counseling; drug and alcohol abuse services; medical services; and residential heating and food acquisition.

(3) Funding for these services shall be coordinated through the economic recovery coordination board which will establish a fund to provide child care assistance, mortgage assistance, and counseling which cannot be met through current programs. No funds shall be used for additional full-time equivalents for administering this section.

(4)(a) Grants for family support centers are intended to provide support to families by responding to needs identified by the families and communities served by the centers. Services provided by family support centers may include parenting education, child development assessments, health and nutrition education, counseling, and information and referral services. Such services may be provided directly by the center or through referral to other agencies participating in the interagency team.

(b) The department shall consult with the council on child abuse or neglect regarding grants for family support centers.

(5) "Timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five

hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in RCW 43.31.631, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection.

**Sec. 39.** RCW 43.31.057 and 1986 c 183 s 2 are each amended to read as follows:

The department of (~~trade~~) **community, trade,** and economic development is directed to develop and promote means to stimulate the expansion of the market for Washington products and shall have the following powers and duties:

(1) To develop a pamphlet for state-wide circulation which will encourage the purchase of items produced in the state of Washington;

(2) To include in the pamphlet a listing of products of Washington companies which individuals can examine when making purchases so they may have the opportunity to select one of those products in support of this program;

(3) To distribute the pamphlets on the broadest possible basis through local offices of state agencies, business organizations, chambers of commerce, or any other means the department deems appropriate;

(4) In carrying out these powers and duties the department shall cooperate and coordinate with other agencies of government and the private sector.

**Sec. 40.** RCW 43.31.085 and 1989 c 430 s 2 are each amended to read as follows:

The business assistance center shall:

(1) Serve as the state's lead agency and advocate for the development and conservation of businesses.

(2) Coordinate the delivery of state programs to assist businesses.

(3) Provide comprehensive referral services to businesses requiring government assistance.

(4) Serve as the business ombudsman within state government and advise the governor and the legislature of the need for new legislation to improve the effectiveness of state programs to assist businesses.

(5) Aggressively promote business awareness of the state's business programs and distribute information on the services available to businesses.

(6) Develop, in concert with local economic development and business assistance organizations, coordinated processes that complement both state and local activities and services.

(7) The business assistance center shall work with other federal, state, and local agencies and organizations to ensure that business assistance services including small business, trade services, and distressed area programs are provided in a coordinated and cost-effective manner.

(8) In collaboration with the child care coordinating committee in the department of social and health services, prepare and disseminate information on child care options for employers and the existence of the program. As much as possible, and through interagency agreements where necessary, such information should be included in the routine communications to employers from (a) the department of revenue, (b) the department of labor and industries, (c) ~~(the department of community development, (d))~~ the employment security department, ~~((e))~~ (d) the department of ((trade)) community, trade, and economic development, ((f)) (e) the small business development center, and ((g)) (f) the department of social and health services.

(9) In collaboration with the child care coordinating committee in the department of social and health services, compile information on and facilitate employer access to individuals, firms, organizations, and agencies that provide technical assistance to employers to enable them to develop and support child care services or facilities.

(10) Actively seek public and private money to support the child care facility fund described in RCW 43.31.502, staff and assist the child care facility fund committee as described in RCW 43.31.504, and work to promote applications to the committee for loan guarantees, loans, and grants.

**Sec. 41.** RCW 43.31.205 and 1992 c 228 s 2 are each amended to read as follows:

In an effort to enhance the economy of the Tri-Cities area, the department of ~~((trade))~~ community, trade, and economic development is directed to promote the existence of the lease between the state of Washington and the federal government executed September 10, 1964, covering one thousand acres of land lying within the Hanford reservation near Richland, Washington, and the opportunity of subleasing the land to entities for nuclear-related industry, in agreement with the terms of the lease. When promoting the existence of the lease, the department shall work in cooperation with any associate development organization~~(s)~~ located in or near the Tri-Cities area.

**Sec. 42.** RCW 43.31.409 and 1989 c 312 s 3 are each amended to read as follows:

There is created in the business assistance center of the department of ~~((trade))~~ community, trade, and economic development the Washington investment opportunities office.

**Sec. 43.** RCW 43.31.411 and 1989 c 312 s 4 are each amended to read as follows:

The Washington investment opportunities office shall:

(1) Maintain a list of all entrepreneurs engaged in manufacturing, wholesaling, transportation services, development of destination tourism resorts, or traded services throughout the state seeking capital resources and interested in the services of the investment opportunities office.

(2) Maintain a file on each entrepreneur which may include the entrepreneur's business plan and any other information which the entrepreneur offers for review by potential investors.

(3) Assist entrepreneurs in procuring the managerial and technical assistance necessary to attract potential investors. Such assistance shall include the automatic referral to the small business innovators opportunity program of any entrepreneur with a new product meriting the services of the program.

(4) Provide entrepreneurs with information about potential investors and provide investors with information about those entrepreneurs which meet the investment criteria of the investor.

(5) Promote small business securities financing.

(6) Remain informed about investment trends in capital markets and preferences of individual investors or investment firms throughout the nation through literature surveys, conferences, and private meetings.

(7) Publicize the services of the investment opportunities office through public meetings throughout the state, appropriately targeted media, and private meetings. Whenever practical, the office shall use the existing services of local associate development organizations in outreach and identification of entrepreneurs and investors.

(8) Report to the ways and means committees and ~~((commerce and labor))~~ appropriate economic development committees of the senate and the house of representatives by December 1, 1989, and each year thereafter, on the accomplishments of the office. Such reports shall include:

(a) The number of entrepreneurs on the list referred to in subsection (1) of this section, segregated by standard industrial classification codes;

(b) The number of investments made in entrepreneurs, segregated as required by (a) of this subsection, as a result of contact with the investment opportunities office, the dollar amount of each such investment, the source, by state or nation, of each investment, and the number of jobs created as a result of each investment;

(c) The number of entrepreneurs on the list referred to in subsection (1) of this section segregated by counties, the number of investments, the dollar amount of investments, and the number of jobs created through investments in each county as a result of contact with the investment opportunities office;

(d) A categorization of jobs created through investments made as a result of contact with the investment opportunities office, the number of jobs created in

each such category, and the average pay scale for jobs created in each such category;

(e) The results of client satisfaction surveys distributed to entrepreneurs and investors using the services of the investment opportunities office; and

(f) Such other information as the managing director finds appropriate.

**Sec. 44.** RCW 43.31.422 and 1991 c 272 s 19 are each amended to read as follows:

The Hanford area economic investment fund is established in the custody of the state treasurer. Moneys in the fund shall only be used pursuant to the recommendations of the committee created in RCW 43.31.425 and the approval of the director of (~~the department of trade~~) community, trade, and economic development for Hanford area revolving loan funds, Hanford area infrastructure projects, or other Hanford area economic development and diversification projects, but may not be used for government or nonprofit organization operating expenses. Up to five percent of moneys in the fund may be used for program administration. For the purpose of this chapter "Hanford area" means Benton and Franklin counties. Disbursements from the fund shall be on the authorization of the director of (~~trade~~) community, trade, and economic development or the director's designee after an affirmative vote of at least six members of the committee created in RCW 43.31.425 on any recommendations by the committee created in RCW 43.31.425. The fund is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. The legislature intends to establish similar economic investment funds for areas that develop low-level radioactive waste disposal facilities.

**Sec. 45.** RCW 43.31.504 and 1989 c 430 s 4 are each amended to read as follows:

The child care facility fund committee is established within the business assistance center of the department of (~~trade~~) community, trade, and economic development. The committee shall administer the child care facility fund, with review by the director of (~~the department of trade~~) community, trade, and economic development.

(1) The committee shall have five members. The director of (~~the department of trade~~) community, trade, and economic development shall appoint the members, who shall include:

(a) Two persons experienced in investment finance and having skills in providing capital to new businesses, in starting and operating businesses, and providing professional services to small or expanding businesses;

(b) One person representing a philanthropic organization with experience in evaluating funding requests;

(c) One child care services expert; and

(d) One early childhood development expert.

In making these appointments, the director shall give careful consideration to ensure that the various geographic regions of the state are represented and that



members will be available for meetings and are committed to working cooperatively to address child care needs in Washington state.

(2) The committee shall elect officers from among its membership and shall adopt policies and procedures specifying the lengths of terms, methods for filling vacancies, and other matters necessary to the ongoing functioning of the committee.

(3) Committee members shall serve without compensation, but may request reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) Committee members shall not be liable to the state, to the child care facility fund, or to any other person as a result of their activities, whether ministerial or discretionary, as members except for willful dishonesty or intentional violation of the law. The department of (~~trade~~) community, trade, and economic development may purchase liability insurance for members and may indemnify these persons against the claims of others.

**Sec. 46.** RCW 43.31.522 and 1990 c 57 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.31.524 and 43.31.526:

(1) "Department" means the department of (~~trade~~) community, trade, and economic development.

(2) "Center" means the business assistance center established under RCW 43.31.083.

(3) "Director" means the director of (~~trade~~) community, trade, and economic development.

(4) "Local nonprofit organization" means a local nonprofit organization organized to provide economic development or community development services, including but not limited to associate development organizations, economic development councils, and community development corporations.

**Sec. 47.** RCW 43.31.524 and 1990 c 57 s 3 are each amended to read as follows:

There is established a Washington marketplace program within the business assistance center established under RCW 43.31.083. The program shall assist businesses to competitively meet their needs for goods and services within Washington state by providing information relating to the replacement of imports or the fulfillment of new requirements with Washington products produced in Washington state. The program shall place special emphasis on strengthening rural economies in economically distressed areas of the state meeting the criteria of an "eligible area" as defined in RCW 82.60.020(3). (~~The Washington marketplace program shall consult with the community revitalization team established pursuant to chapter 43.165 RCW.~~)

**Sec. 48.** RCW 43.31.526 and 1990 c 57 s 4 are each amended to read as follows:

(1) The department shall contract with local nonprofit organizations in ~~((at least three economically))~~ distressed areas of the state that meet the criteria of an "eligible area" as defined in RCW 82.60.020(3) to implement the Washington marketplace program in these areas. The department, in order to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas, may enter into joint contracts with multiple nonprofit organizations. Contracts with economic development organizations to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas shall be structured by the department and the distressed area marketplace programs. Contracts with economic development organizations shall:

(a) Award contracts based on a competitive bidding process, pursuant to chapter 43.19 RCW;

(b) Give preference to nonprofit organizations representing a broad spectrum of community support; and

(c) Ensure that each location contain sufficient business activity to permit effective program operation.

The department may require that contractors contribute at least twenty percent local funding.

(2) The contracts with local nonprofit organizations shall be for, but not limited to, the performance of the following services for the Washington marketplace program:

(a) Contacting Washington state businesses to identify goods and services they are currently buying or are planning in the future to buy out-of-state and determine which of these goods and services could be purchased on competitive terms within the state;

(b) Identifying locally sold goods and services which are currently provided by out-of-state businesses;

(c) Determining, in consultation with local business, goods and services for which the business is willing to make contract agreements;

(d) Advertising market opportunities described in (c) of this subsection; and

(e) Receiving bid responses from potential suppliers and sending them to that business for final selection.

(3) Contracts may include provisions for charging service fees of businesses that profit as a result of participation in the program.

(4) The center shall also perform the following activities in order to promote the goals of the program:

(a) Prepare promotional materials or conduct seminars to inform communities and organizations about the Washington marketplace program;

(b) Provide technical assistance to communities and organizations interested in developing an import replacement program;

(c) Develop standardized procedures for operating the local component of the Washington marketplace program;

(d) Provide continuing management and technical assistance to local contractors; and

(e) Report by December 31 of each year to the ~~((senate))~~ appropriate economic development ((and labor committee and to)) committees of the senate and the house of representatives ((trade and economic development committee)) describing the activities of the Washington marketplace program.

**Sec. 49.** RCW 43.31.621 and 1991 c 314 s 4 are each amended to read as follows:

(1) There is established the agency timber task force. The task force shall be chaired by the timber recovery coordinator. It shall be the responsibility of the coordinator that all directives of chapter 314, Laws of 1991 are carried out expeditiously by the agencies represented in the task force. The task force shall consist of the directors, or representatives of the directors, of the following agencies: The department of ~~((trade))~~ community, trade, and economic development~~((department of community development))~~, employment security department, department of social and health services, state board for community college education, state board for vocational education, or its replacement entity, department of natural resources, department of transportation, state energy office, department of wildlife, University of Washington center for international trade in forest products, and department of ecology. The task force may consult and enlist the assistance of the following: The higher education coordinating board, University of Washington college of forest resources, Washington State University school of forestry, Northwest policy center, state superintendent of public instruction, the Evergreen partnership, Washington association of counties, and rural development council.

(2) This section shall expire June 30, ~~((1993))~~ 1995.

**Sec. 50.** RCW 43.31.641 and 1991 c 314 s 7 are each amended to read as follows:

The department of ~~((trade))~~ community, trade, and economic development, as a member of the agency timber task force and in consultation with the board, shall:

(1) Implement an expanded value-added forest products development industrial extension program. The department shall provide technical assistance to small and medium-sized forest products companies to include:

- (a) Secondary manufacturing product development;
- (b) Plant and equipment maintenance;
- (c) Identification and development of domestic market opportunities;
- (d) Building products export development assistance;
- (e) At-risk business development assistance;
- (f) Business network development; and
- (g) Timber impact area industrial diversification.

(2) Provide local contracts for small and medium-sized forest product companies, start-ups, and business organizations for business feasibility, market development, and business network contracts that will benefit value-added production efforts in the industry.

(3) Contract with local business organizations in timber impact areas for development of programs to promote industrial diversification. ~~((In addition,))~~ The department shall ~~((develop an interagency agreement with the department of community development for))~~ provide local capacity-building grants to local governments and community-based organizations in timber impact areas, which may include long-range planning and needs assessments.

For the 1991-93 biennium, the department of ~~((trade))~~ community, trade, and economic development shall use funds appropriated for this section for contracts and for no more than two additional staff positions.

**Sec. 51.** RCW 43.31.651 and 1991 c 314 s 9 are each amended to read as follows:

The department of community, trade, and economic development as a part of the agency timber task force and in consultation with the board, shall implement a community assistance program to enable communities to build local capacity for sustainable economic development efforts. The program shall provide resources and technical assistance to timber impact areas.

~~((In addition, the department shall develop an interagency agreement with the department of trade and economic development for local capacity-building grants to local governments and community-based organizations in timber impact areas.))~~

**Sec. 52.** RCW 43.31.800 and 1987 c 195 s 4 are each amended to read as follows:

"Director" as used in RCW 43.31.790 through 43.31.850 and 67.16.100 means the director of ~~((trade))~~ community, trade, and economic development.

**Sec. 53.** RCW 43.31.830 and 1987 c 195 s 7 are each amended to read as follows:

(1) It shall be the duty of the director of community, trade, and economic development to certify, from the applications received, the state international trade fair or fairs qualified and entitled to receive funds under RCW ~~((43.31.790 through 43.31.850 and))~~ 67.16.100, ~~((as now or hereafter amended))~~ and under rules established by the director.

(2) The director shall make annual allotments to state international trade fairs determined qualified to be entitled to participate in the state trade fair fund and shall fix times for the division of and payment from the state trade fair fund: PROVIDED, That total payment to any one state international trade fair shall not exceed sixty thousand dollars in any one year, where participation or presentation occurs within the United States, and eighty thousand dollars in any one year, where participation or presentation occurs outside the United States: PROVIDED FURTHER, That a state international trade fair may qualify for the full allotment of funds under either category. Upon certification of the allotment and division of fair funds by the director ~~((of trade and economic development))~~ the treasurer shall proceed to pay the same to carry out the purposes of RCW ~~((43.31.790 through 43.31.850 and))~~ 67.16.100~~((, as now or hereafter amended))~~.

**Sec. 54.** RCW 43.31.840 and 1975 1st ex.s. c 292 s 6 are each amended to read as follows:

The director of community, trade, and economic development shall at the end of each year for which an annual allotment has been made, (~~cause to be conducted,~~) conduct a post audit of all of the books and records of each state international trade fair participating in the state trade fair fund. The purpose of such post audit shall be to determine how and to what extent each participating state international trade fair has expended all of its funds.

The audit required by this section shall be a condition to future allotments of money from the state international trade fair fund, and the director shall make a report of the findings of each post audit and shall use such report as a consideration in an application for any future allocations.

**Sec. 55.** RCW 43.160.020 and 1992 c 21 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the community economic revitalization board.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this chapter.

(3) "Department" means the department of (~~trade~~) community, trade, and economic development (~~(or its successor with respect to the powers granted by this chapter)~~).

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Industrial development facilities" means "industrial development facilities" as defined in RCW 39.84.020.

(6) "Industrial development revenue bonds" means tax-exempt revenue bonds used to fund industrial development facilities.

(7) "Local government" means any port district, county, city, or town.

(8) "Sponsor" means any of the following entities which customarily provide service or otherwise aid in industrial or other financing and are approved as a sponsor by the board: A bank, trust company, savings bank, investment bank, national banking association, savings and loan association, building and loan association, credit union, insurance company, or any other financial institution, governmental agency, or holding company of any entity specified in this subsection.

(9) "Umbrella bonds" means industrial development revenue bonds from which the proceeds are loaned, transferred, or otherwise made available to two or more users under this chapter.

(10) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and receiving or applying to receive revenues from bonds issued under this chapter.

(11) "Timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in RCW 43.31.631, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection.

**Sec. 56.** RCW 43.168.020 and 1991 c 314 s 19 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Committee" means the Washington state development loan fund committee.

(2) "Department" means the department of community, trade, and economic development.

(3) "Director" means the director of (~~the department of~~) community, trade, and economic development.

(4) "Distressed area" means: (a) A county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; (b) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection (4)(b) shall be filed by April 30, 1989; (c) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate; or (d) a county designated as a timber impact area under RCW 43.31.601 if an application is filed by July 1, 1993. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban develop-

ment in its regulations authorizing action grants for economic development and neighborhood revitalization projects.

(5) "Fund" means the Washington state development loan fund.

(6) "Local development organization" means a nonprofit organization which is organized to operate within an area, demonstrates a commitment to a long-standing effort for an economic development program, and makes a demonstrable effort to assist in the employment of unemployed or underemployed residents in an area.

(7) "Project" means the establishment of a new or expanded business in an area which when completed will provide employment opportunities. "Project" also means the retention of an existing business in an area which when completed will provide employment opportunities.

**Sec. 57.** RCW 43.210.110 and 1991 c 314 s 12 are each amended to read as follows:

(1) The small business export finance assistance center has the following powers and duties when exercising its authority under RCW 43.210.100(3):

(a) Solicit and accept grants, contributions, and any other financial assistance from the federal government, federal agencies, and any other public or private sources to carry out its purposes;

(b) Offer comprehensive export assistance and counseling to manufacturers relatively new to exporting with gross annual revenues less than twenty-five million dollars. As close to ninety percent as possible of each year's new cadre of clients must have gross annual revenues of less than five million dollars at the time of their initial contract. At least fifty percent of each year's new cadre of clients shall be from timber impact areas as defined in RCW 43.31.601. Counseling may include, but not be limited to, helping clients obtain debt or equity financing, in constructing competent proposals, and assessing federal guarantee and/or insurance programs that underwrite exporting risk; assisting clients in evaluating their international marketplace by developing marketing materials, assessing and selecting targeted markets; assisting firms in finding foreign customers by conducting foreign market research, evaluating distribution systems, selecting and assisting in identification of and/or negotiations with foreign agents, distributors, retailers, and by promoting products through attending trade shows abroad; advising companies on their products, guarantees, and after sales service requirements necessary to compete effectively in a foreign market; designing a competitive strategy for a firm's products in targeted markets and methods of minimizing their commercial and political risks; securing for clients specific assistance as needed, outside the center's field of expertise, by referrals to other public or private organizations. The Pacific Northwest export assistance project shall focus its efforts on facilitating export transactions for its clients, and in doing so, provide such technical services as are appropriate to accomplish its mission either with staff or outside consultants;

(c) Sign three-year counseling agreements with its clients that provide for termination if adequate funding for the Pacific Northwest export assistance

project is not provided in future appropriations. Counseling agreements shall not be renewed unless there are compelling reasons to do so, and under no circumstances shall they be renewed for more than two additional years. A counseling agreement may not be renewed more than once. The counseling agreements shall have mutual performance clauses, that if not met, will be grounds for releasing each party, without penalty, from the provisions of the agreement. Clients shall be immediately released from a counseling agreement with the Pacific Northwest export assistance project, without penalty, if a client wishes to switch to a private export management service and produces a valid contract signed with a private export management service, or if the president of the small business export finance assistance center determines there are compelling reasons to release a client from the provisions of the counseling agreement;

(d) May contract with private or public international trade education services to provide Pacific Northwest export assistance project clients with training in international business. The president and board of directors shall decide the amount of funding allocated for educational services based on the availability of resources in the operating budget of the Pacific Northwest export assistance project;

(e) May contract with the Washington state international trade fair to provide services for Pacific Northwest export assistance project clients to participate in one trade show annually. The president and board of directors shall decide the amount of funding allocated for trade fair assistance based on the availability of resources in the operating budget of the Pacific Northwest export assistance project;

(f) Provide biennial assessments of its performance. Project personnel shall work with the department of revenue and employment security department to confidentially track the performance of the project's clients in increasing tax revenues to the state, increasing gross sales revenues and volume of products destined to foreign clients, and in creating new jobs for Washington citizens. A biennial report shall be prepared for the governor and legislature to assess the costs and benefits to the state from creating the project. The president of the small business export finance assistance center shall design an appropriate methodology for biennial assessments in consultation with the director of ~~((the department of trade))~~ community, trade, and economic development and the director of the Washington state department of agriculture. The department of revenue and the employment security department shall provide data necessary to complete this biennial evaluation, if the data being requested is available from existing data bases. Client-specific information generated from the files of the department of revenue and the employment security department for the purposes of this evaluation shall be kept strictly confidential by each department and the small business export finance assistance center;

(g) Take whatever action may be necessary to accomplish the purposes set forth in RCW 43.210.070 and 43.210.100 through 43.210.120; and



(h) Limit its assistance to promoting the exportation of value-added manufactured goods. The project shall not provide counseling or assistance, under any circumstances, for the importation of foreign made goods into the United States.

(2) The Pacific Northwest export assistance project shall not, under any circumstances, assume ownership or take title to the goods of its clients.

(3) The Pacific Northwest export assistance project may not use any Washington state funds which come from the public treasury of the state of Washington to make loans or to make any payment under a loan guarantee agreement. Under no circumstances may the center use any funds received under RCW 43.210.050 to make or assist in making any loan or to pay or assist in paying any amount under a loan guarantee agreement. Debts of the center shall be center debts only and may be satisfied only from the resources of the center. The state of Washington shall not in any way be liable for such debts.

(4) The Pacific Northwest export assistance project shall make every effort to seek nonstate funds to supplement its operations.

(5) The Pacific Northwest export assistance project shall take whatever steps are necessary to provide its services, if requested, to the states of Oregon, Idaho, Montana, Alaska, and the Canadian provinces of British Columbia and Alberta. Interstate services shall not be provided by the Pacific Northwest export assistance project during its first biennium of operation. The provision of services may be temporary and subject to the payment of fees, or each state may request permanent services contingent upon a level of permanent funding adequate for services provided. Temporary services and fees may be negotiated by the small business export finance assistance center's president subject to approval of the board of directors. The president of the small business export finance assistance center may enter into negotiations with neighboring states to contract for delivery of the project's services. Final contracts for providing the project's counseling and services outside of the state of Washington on a permanent basis shall be subject to approval of the governor, appropriate legislative oversight committees, and the small business export finance assistance center's board of directors.

(6) The small business export finance assistance center may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the Pacific Northwest export assistance project and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(7) The president of the small business export finance assistance center, in consultation with the board of directors, may use the following formula in determining the number of clients that can be reasonably served by the Pacific Northwest export assistance project relative to its appropriation. Divide the amount appropriated for administration of the Pacific Northwest export assistance project by the marginal cost of adding each additional Pacific Northwest export assistance project client. For the purposes of this calculation, and only for the

first biennium of operation, the biennial marginal cost of adding each additional Pacific Northwest export assistance project client shall be fifty-seven thousand ninety-five dollars. The biennial marginal cost of adding each additional client after the first biennium of operation shall be established from the actual operating experience of the Pacific Northwest export assistance project.

(8) All receipts from the Pacific Northwest export assistance project shall be deposited into the general fund.

**Sec. 58.** RCW 43.63A.066 and 1990 c 33 s 579 are each amended to read as follows:

The department of community, trade, and economic development shall have primary responsibility for providing child abuse and neglect prevention training to preschool age children participating in the federal head start program or the early childhood education and assistance program established under RCW 28A.215.010 through 28A.215.200 and 28A.215.900 through 28A.215.908.

**Sec. 59.** RCW 43.63A.075 and 1985 c 466 s 53 are each amended to read as follows:

The department shall establish a community development finance program. Pursuant to this program, the department shall: (1) Develop expertise in federal, state, and local community and economic development programs; and (2) assist communities and businesses to secure available financing(~~(+and (3) work closely with the department of trade and economic development on financial and technical assistance programs available to small and medium sized businesses)~~). To the extent permitted by federal law, the department is encouraged to use federal community block grant funds to make urban development action grants to communities which have not been eligible to receive such grants prior to June 30, 1984.

**Sec. 60.** RCW 43.63A.115 and 1990 c 156 s 1 are each amended to read as follows:

(1) The community action agency network, established initially under the federal economic opportunity act of 1964 and subsequently under the federal community services block grant program of 1981, as amended, shall be a delivery system for federal and state anti-poverty programs in this state, including but not limited to the community services block grant program, the low-income energy assistance program, and the federal department of energy weatherization program.

(2) Local community action agencies comprise the community action agency network. The community action agency network shall serve low-income persons in the counties. Each community action agency and its service area shall be designated in the state federal community service block grant plan as prepared by the department of community, trade, and economic development.

(3) Funds for anti-poverty programs may be distributed to the community action agencies by the department of community, trade, and economic develop-

ment and other state agencies in consultation with the authorized representatives of community action agency networks.

**Sec. 61.** RCW 43.63A.155 and 1989 c 225 s 5 are each amended to read as follows:

The department of community, trade, and economic development shall retain the bond information it receives under RCW 39.44.210 and 39.44.230 and shall publish summaries of local government bond issues at least once a year.

The department of community, trade, and economic development shall adopt rules under chapter 34.05 RCW to implement RCW 39.44.210 and 39.44.230.

**Sec. 62.** RCW 43.63A.220 and 1987 c 505 s 34 are each amended to read as follows:

(1) The department of community, trade, and economic development is directed to undertake a study as to the best means of providing encouragement and assistance to the formulation of employee stock ownership plans providing for the partial or total acquisition, through purchase, distribution in lieu of compensation, or a combination of these means or any other lawful means, of shares of stock or other instruments of equity in facilities by persons employed at these facilities in cases in which operations at these facilities would, absent employee equity ownership, be terminated, relocated outside of the state, or so reduced in volume as to entail the permanent layoff of a substantial number of the employees.

(2) In conducting its study, the department shall:

(a) Consider federal and state law relating directly or indirectly to plans proposed under subsection (1) of this section, and to the organization and operation of any trusts established pursuant to the plans, including but not limited to, the federal internal revenue code and any regulations promulgated under the internal revenue code, the federal securities act of 1933 as amended and other federal statutes providing for regulation of the issuance of securities, the federal employee retirement income and security act of 1974 as amended, the Chrysler loan guarantee legislation enacted by the United States congress in 1979, and other federal and state laws relating to employment, compensation, taxation, and retirement;

(b) Consult with relevant persons in the public sector, relevant persons in the private sector, including trustees of any existing employee stock ownership trust, and employees of any firm operating under an employee stock ownership trust, and with members of the academic community and of relevant branches of the legal profession;

(c) Examine the experience of trusts organized pursuant to an employee stock ownership plan in this state or in any other state; and

(d) Make other investigations as it may deem necessary in carrying out the purposes of this section.

(3) Pursuant to the findings and conclusions of the study conducted under subsection (2) of this section, the department of community, trade, and economic

development shall develop a plan to encourage and assist the formulation of employee stock ownership plans providing for the acquisition of stock by employees of facilities in this state which are subject to closure or drastically curtailed operation. The department shall determine the amount of any costs of implementing the plan.

(4) The director of community, trade, and economic development shall, within one year of July 28, 1985, report the findings and conclusion of the study, together with details of the plan developed pursuant to the study, to the legislature, and shall include in the report any recommendations for legislation which the director deems appropriate.

(5) The department of community, trade, and economic development shall carry out its duties under this section using available resources.

**Sec. 63.** RCW 43.63A.230 and 1988 c 186 s 17 are each amended to read as follows:

(1) The department of community, trade, and economic development shall integrate an employee ownership program within its existing technical assistance programs. The employee ownership program shall provide technical assistance to cooperatives authorized under chapter 23.78 RCW and conduct educational programs on employee ownership and self-management. The department shall include information on the option of employee ownership wherever appropriate in its various programs.

(2) The department shall maintain a list of firms and individuals with expertise in the field of employee ownership and utilize such firms and individuals, as appropriate, in delivering and coordinating the delivery of technical, managerial, and educational services. In addition, the department shall work with and rely on the services of ~~((the department of trade and economic development,))~~ the employment security department~~((,))~~ and state institutions of higher education to promote employee ownership.

(3) The department shall report to the governor, the ~~((trade and))~~ appropriate economic development ~~((committee of))~~ committees of the senate and the house of representatives, ((the commerce and labor committee of the senate,)) and the ways and means committees of each house by December 1 of 1988, and each year thereafter, on the accomplishments of the employee-ownership program. Such reports shall include the number and types of firms assisted, the number of jobs created by such firms, the types of services, the number of workshops presented, the number of employees trained, and the results of client satisfaction surveys distributed to those using the services of the program.

(4) For purposes of this section, an employee stock ownership plan qualifies as a cooperative if at least fifty percent, plus one share, of its voting shares of stock are voted on a one-person-one-vote basis.

**Sec. 64.** RCW 43.63A.245 and 1992 c 63 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.63A.240 through 43.63A.270.

"Agency" means one of the agencies or organizations participating in the activities of the senior environmental corps.

"Coordinator" means the person designated by the director of (~~the department of~~) community, trade, and economic development with the advice of the council to administer the activities of the senior environmental corps.

"Corps" means the senior environmental corps.

"Council" means the senior environmental corps coordinating council.

"Department" means the department of community, trade, and economic development.

"Director" means the director of (~~the department of~~) community, trade, and economic development or the director's authorized representative.

"Representative" means the person who represents an agency on the council and is responsible for the activities of the senior environmental corps in his or her agency.

"Senior" means any person who is fifty-five years of age or over.

"Volunteer" means a person who is willing to work without expectation of salary or financial reward, and who chooses where he or she provides services and the type of services he or she provides.

**Sec. 65.** RCW 43.63A.247 and 1992 c 63 s 3 are each amended to read as follows:

The senior environmental corps is created within the department of community, trade, and economic development. The departments of agriculture, community, trade, and economic development, employment security, ecology, fisheries, health, natural resources, and wildlife, the parks and recreation commission, and the Puget Sound water quality authority shall participate in the administration and implementation of the corps and shall appoint representatives to the council.

**Sec. 66.** RCW 43.63A.260 and 1992 c 63 s 5 are each amended to read as follows:

The department shall convene a senior environmental corps coordinating council to meet as needed to establish and assess policies, define standards for projects, evaluate and select projects, develop recruitment, training, and placement procedures, receive and review project status and completion reports, and provide for recognition of volunteer activity. The council shall include representatives appointed by the departments of agriculture, community, trade, and economic development, ecology, fisheries, health, natural resources, and wildlife, the parks and recreation commission, and the Puget Sound water quality authority. The council shall develop bylaws, policies and procedures to govern its activities.

The council shall advise the director on distribution of available funding for corps activities.

**Sec. 67.** RCW 43.63A.275 and 1992 c 65 s 2 are each amended to read as follows:

(1) Each biennium the department of community, trade, and economic development shall distribute such funds as are appropriated for retired senior volunteer programs (RSVP) as follows:

(a) At least sixty-five percent of the moneys may be distributed according to formulae and criteria to be determined by the department of community, trade, and economic development in consultation with the RSVP directors association.

(b) Up to twenty percent of the moneys may be distributed by competitive grant process to develop RSVP projects in counties not presently being served, or to expand existing RSVP services into counties not presently served.

(c) Ten percent of the moneys may be used by the department of community, trade, and economic development for administration, monitoring of the grants, and providing technical assistance to the RSVP projects.

(d) Up to five percent of the moneys may be used to support projects that will benefit RSVPs state-wide.

(2) Grants under subsection (1) of this section shall give priority to programs in the areas of education, tutoring, English as a second language, combating of and education on drug abuse, housing and homeless, and respite care, and shall be distributed in accordance with the following:

(a) None of the grant moneys may be used to displace any paid employee in the area being served.

(b) Grants shall be made for programs that focus on:

(i) Developing new roles for senior volunteers in nonprofit and public organizations with special emphasis on areas targeted in section 1, chapter 65, Laws of 1992. The roles shall reflect the diversity of the local senior population and shall respect their life experiences;

(ii) Increasing the expertise of volunteer managers and RSVP managers in the areas of communication, recruitment, motivation, and retention of today's over-sixty population;

(iii) Increasing the number of senior citizens recruited, referred, and placed with nonprofit and public organizations; and

(iv) Providing volunteer support such as: Mileage to and from the volunteer assignment, recognition, and volunteer insurance.

**Sec. 68.** RCW 43.63A.300 and 1986 c 266 s 54 are each amended to read as follows:

The legislature finds that fire protection services at the state level are provided by different, independent state agencies. This has resulted in a lack of a comprehensive state-level focus for state fire protection services, funding, and policy. It is the intent of the legislature to consolidate fire protection services into a single state agency and to create a state board with the responsibility of (1) establishing a comprehensive state policy regarding fire protection services and (2) advising the director of community, trade, and economic development and the director of fire protection on matters relating to their duties under state

law. It is also the intent of the legislature that the fire protection services program created herein will assist local fire protection agencies in program development without encroaching upon their historic autonomy.

**Sec. 69.** RCW 43.63A.320 and 1986 c 266 s 56 are each amended to read as follows:

Except for matters relating to the statutory duties of the director of community, trade, and economic development which are to be carried out through the director of fire protection, the board shall have the responsibility of developing a comprehensive state policy regarding fire protection services. In carrying out its duties, the board shall:

- (1) Adopt a state fire protection master plan;
- (2) Monitor fire protection in the state and develop objectives and priorities to improve fire protection for the state's citizens;
- (3) Establish and promote state arson control programs and ensure development of local arson control programs;
- (4) Provide representation for local fire protection services to the governor in state-level fire protection planning matters such as, but not limited to, hazardous materials;
- (5) Seek and solicit grants, gifts, bequests, devices, and matching funds for use in furthering the objectives and duties of the board, and establish procedures for administering them;
- (6) Promote mutual aid and disaster planning for fire services in this state;
- (7) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention;
- (8) Submit annually a report to the governor containing a statement of its official acts pursuant to this chapter, and make such studies, reports, and recommendations to the governor and the legislature as are requested;
- (9) Adopt a state fire training and education master plan;
- (10) Develop and adopt a master plan for the construction, equipping, maintaining, and operation of necessary fire service training and education facilities, but the authority to construct, equip, and maintain such facilities is subject to chapter 43.19 RCW;
- (11) Develop and adopt a master plan for the purchase, lease, or other acquisition of real estate necessary to establish and operate fire service training and education facilities in a manner provided by law;
- (12) Adopt standards for state-wide fire service training and education courses including courses in arson detection and investigation for personnel of fire, police, and prosecutor's departments;
- (13) Assure the administration of any legislation enacted by the legislature in pursuance of the aims and purposes of any acts of Congress insofar as the provisions thereof may apply;
- (14) Cooperate with the common schools, community colleges, institutions of higher education, and any department or division of the state, or of any county or municipal corporation in establishing and maintaining instruction in fire

service training and education in accordance with any act of Congress and legislation enacted by the legislature in pursuance thereof and in establishing, building, and operating training and education facilities.

This section does not apply to forest fire service personnel and programs. Industrial fire departments and private fire investigators may participate in training and education programs under this chapter for a reasonable fee established by rule.

**Sec. 70.** RCW 43.63A.330 and 1986 c 266 s 57 are each amended to read as follows:

In regards to the statutory duties of the director of community, trade, and economic development which are to be carried out through the director of fire protection, the board shall serve in an advisory capacity in order to enhance the continuity of state fire protection services. In this capacity, the board shall:

- (1) Advise the director of community, trade, and economic development and the director of fire protection on matters pertaining to their duties under law; and
- (2) Advise the director of community, trade, and economic development and the director of fire protection on all budgeting and fiscal matters pertaining to the duties of the director of fire protection and the board.

**Sec. 71.** RCW 43.63A.340 and 1986 c 266 s 58 are each amended to read as follows:

(1) Wherever the term state fire marshal appears in the Revised Code of Washington or the Washington Administrative Code it shall mean the director of fire protection.

(2) The director of community, trade, and economic development shall appoint an assistant director who shall be known as the director of fire protection. The board, after consulting with the director, shall prescribe qualifications for the position of director of fire protection. The board shall submit to the director a list containing the names of three persons whom the board believes meet its qualifications. If requested by the director, the board shall submit one additional list of three persons whom the board believes meet its qualifications. The appointment shall be from one of the lists of persons submitted by the board.

(3) The director of fire protection may designate one or more deputies and may delegate to those deputies his or her duties and authorities as deemed appropriate.

(4) The director of community, trade, and economic development, through the director of fire protection, shall, after consultation with the board, prepare a biennial budget pertaining to fire protection services. Such biennial budget shall be submitted as part of the department's budget request.

(5) The director of community, trade, and economic development, through the director of fire protection, shall implement and administer, within the constraints established by budgeted resources, the policies of the board and all



duties of the director of community, trade, and economic development which are to be carried out through the director of fire protection.

(6) The director of community, trade, and economic development, through the director of fire protection, shall seek the advice of the board in carrying out his or her duties under law.

**Sec. 72.** RCW 43.63A.400 and 1987 c 308 s 2 are each amended to read as follows:

The department of community, trade, and economic development shall distribute grants to eligible public radio and television broadcast stations under RCW 43.63A.410 and 43.63A.420 to assist with programming, operations, and capital needs.

**Sec. 73.** RCW 43.63A.410 and 1987 c 308 s 3 are each amended to read as follows:

(1) Eligibility for grants under this section shall be limited to broadcast stations which are:

(a) Licensed to Washington state organizations, nonprofit corporations, or other entities under section 73.621 of the regulations of the federal communications commission; and

(b) Qualified to receive community service grants from the federally chartered corporation for public broadcasting. Eligibility shall be established as of February 28th of each year.

(2) The formula in this subsection shall be used to compute the amount of each eligible station's grant under this section.

(a) Appropriations under this section shall be divided into a radio fund, which shall be twenty-five percent of the total appropriation under this section, and a television fund, which shall be seventy-five percent of the total appropriation under this section. Each of the two funds shall be divided into a base grant pool, which shall be fifty percent of the fund, and an incentive grant pool, which shall be the remaining fifty percent of the fund.

(b) Each eligible participating public radio station shall receive an equal share of the radio base grant pool, plus a share of the radio incentive grant pool equal to the proportion its nonfederal financial support bears to the sum of all participating radio stations' nonfederal financial support as most recently reported to the corporation for public broadcasting.

(c) Each eligible participating public television station shall receive an equal share of the television base grant pool, plus a share of the television incentive grant pool equal to the proportion its nonfederal financial support bears to the sum of all participating television stations' nonfederal financial support as most recently reported to the corporation for public broadcasting.

(3) Annual financial reports to the corporation for public broadcasting by eligible stations shall also be submitted by the stations to the department of community, trade, and economic development.

**Sec. 74.** RCW 43.63A.440 and 1989 c 424 s 7 are each amended to read as follows:

(1) The department of community, trade, and economic development shall provide technical and financial assistance to communities adversely impacted by reductions in timber harvested from federal lands. This assistance shall include the formation and implementation of community economic development plans. The department of community, trade, and economic development shall utilize existing state technical and financial assistance programs, and shall aid communities in seeking private and federal financial assistance for the purposes of this section. The department may contract for services provided for under this section.

(2) The sum of four hundred fifty thousand dollars, or as much thereof as may be necessary, is appropriated from the general fund to the department of community, trade, and economic development for the biennium ending June 30, 1991, for the purposes of subsection (1) of this section.

**Sec. 75.** RCW 43.63A.450 and 1990 c 278 s 2 are each amended to read as follows:

The community diversification program is created in the department of community, trade, and economic development. The program shall include:

(1) The monitoring and forecasting of shifts in the economic prospects of major defense employers in the state. This shall include but not be limited to the monitoring of defense contract expenditures, other federal contracts, defense employment shifts, the aircraft and aerospace industry, computer products, and electronics;

(2) The identification of cities, counties, or regions within the state that are primarily dependent on defense or other federal contracting and the identification of firms dependent on federal defense contracts;

(3) Assistance to communities in broadening the local economic base through the provision of management assistance, assistance in financing, entrepreneurial training, and assistance to businesses in using off-the-shelf technology to start new production processes or introduce new products;

(4) Formulating a state plan for diversification in defense dependent communities in collaboration with the employment security department (~~(the department of trade and economic development,))~~) and the office of financial management. The plan shall use the information made available through carrying out subsections (1) and (2) of this section; and

(5) The identification of diversification efforts conducted by other states, the federal government, and other nations, and the provision of information on these efforts, as well as information gained through carrying out subsections (1) and (2) of this section, to firms, communities, and (~~(workforces))~~ work forces that are defense dependent.

The department shall, beginning January 1, 1992, report annually to the governor and the legislature on the activities of the community diversification program.

**Sec. 76.** RCW 43.63A.460 and 1990 c 176 s 2 are each amended to read as follows:

Beginning on July 1, 1991, the department of community, trade, and economic development shall be responsible for performing all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

The department of community, trade, and economic development may enter into state or local interagency agreements to coordinate site inspection activities with record monitoring and complaint handling. The interagency agreement may also provide for the reimbursement for cost of work that an agency performs. The department may include other related areas in any interagency agreements which are necessary for the efficient provision of services.

The department of labor and industries shall transfer all records, files, books, and documents necessary for the department of community, trade, and economic development to assume these new functions.

The directors of ~~((the department of))~~ community, trade, and economic development and the department of labor and industries shall immediately take such steps as are necessary to ensure that this act is implemented on June 7, 1990.

**Sec. 77.** RCW 43.63A.600 and 1991 c 315 s 23 are each amended to read as follows:

(1) The department of community, trade, and economic development, as a member of the agency timber task force and in consultation with the economic recovery coordination board, shall establish and administer the emergency mortgage and rental assistance program. The department shall identify the communities most adversely affected by reductions in timber harvest levels and shall prioritize assistance under this program to these communities. The department shall work with the department of social and health services and the timber recovery coordinator to develop the program in timber impact areas. Organizations eligible to receive funds for distribution under the program are those organizations that are eligible to receive assistance through the Washington housing trust fund.

(2) The goals of the program are to:

(a) Provide temporary emergency mortgage or rental assistance loans on behalf of dislocated forest products workers in timber impact areas who are unable to make current mortgage or rental payments on their permanent residences and are subject to immediate eviction for nonpayment of mortgage installments or nonpayment of rent;

(b) Prevent the dislocation of individuals and families from their permanent residences and their communities; and

(c) Maintain economic and social stability in timber impact areas.

**Sec. 78.** RCW 43.105.020 and 1990 c 208 s 3 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise, the following definitions shall apply:

- (1) "Department" means the department of information services;
- (2) "Board" means the information services board;
- (3) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately;
- (4) "Director" means the director of the department;
- (5) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing;
- (6) "Backbone network" means the shared high-density portions of the state's telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network;
- (7) "Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other means;
- (8) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions;
- (9) "Information services" means data processing, telecommunications, and office automation;
- (10) "Equipment" means the machines, devices, and transmission facilities used in information processing, such as computers, word processors, terminals, telephones, and cables;
- (11) "Proprietary software" means that software offered for sale or license;
- (12) "Video telecommunications" means the electronic interconnection of two or more sites for the purpose of transmitting and/or receiving visual and associated audio information. Video telecommunications shall not include existing public television broadcast stations as currently designated by the department of community, trade, and economic development under chapter ((43-63A)) 43.— RCW (sections 1 through 7, 9 through 16, 79, and 83 of this act).

**NEW SECTION. Sec. 79.** (1) All references to the director or department of community development in the Revised Code of Washington shall be construed to mean the director of community, trade, and economic development or the department of community, trade, and economic development.

(2) All references to the director or department of trade and economic development in the Revised Code of Washington shall be construed to mean the director of community, trade, and economic development or the department of community, trade, and economic development.

**Sec. 80.** RCW 43.31.091 and 1990 c 297 s 9 are each amended to read as follows:

The business assistance center and its powers and duties shall be terminated on June 30, (~~(1993)~~ 1995), as provided in RCW 43.31.092.

**Sec. 81.** RCW 43.31.092 and 1990 c 297 s 10 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~(1994)~~ 1996):

(1) Section 2, chapter 348, Laws of 1987 and RCW 43.31.083;

(2) Section 11, chapter 466, Laws of 1985, section 3, chapter 348, Laws of 1987, section 2, chapter 430, Laws of 1989 and RCW 43.31.085;

(3) Section 4, chapter 348, Laws of 1987 and RCW 43.31.087; and

(4) Section 5, chapter 348, Laws of 1987 and RCW 43.31.089.

**NEW SECTION. Sec. 82.** The following acts or parts of acts are each repealed:

(1) RCW 43.31.005 and 1990 1st ex.s. c 17 s 68 & 1985 c 466 s 1;

(2) RCW 43.31.015 and 1985 c 466 s 2;

(3) RCW 43.31.025 and 1987 c 348 s 8 & 1985 c 466 s 3;

(4) RCW 43.31.035 and 1990 1st ex.s. c 17 s 69 & 1985 c 466 s 4;

(5) RCW 43.31.045 and 1985 c 466 s 5;

(6) RCW 43.31.055 and 1985 c 466 s 6;

(7) RCW 43.31.065 and 1985 c 466 s 9;

(8) RCW 43.31.075 and 1985 c 466 s 10;

(9) RCW 43.31.095 and 1985 c 466 s 12;

(10) RCW 43.31.097 and 1990 1st ex.s. c 17 s 71;

(11) RCW 43.31.105 and 1985 c 466 s 13;

(12) RCW 43.31.115 and 1985 c 466 s 14;

(13) RCW 43.31.130 and 1975-'76 2nd ex.s. c 34 s 110 & 1965 c 8 s 43.31.130;

(14) RCW 43.31.135 and 1987 c 505 s 30 & 1985 c 466 s 17;

(15) RCW 43.31.373 and 1988 c 35 s 1, 1985 c 466 s 24, & 1984 c 175 s 1;

(16) RCW 43.31.375 and 1985 c 466 s 25 & 1984 c 175 s 2;

(17) RCW 43.31.377 and 1988 c 35 s 2, 1985 c 466 s 26, & 1984 c 175 s 3;

(18) RCW 43.31.379 and 1988 c 35 s 3, 1985 c 466 s 27, & 1984 c 175 s 4;

(19) RCW 43.31.381 and 1988 c 35 s 4, 1985 c 466 s 28, & 1984 c 175 s 5;

- (20) RCW 43.31.383 and 1985 c 466 s 29 & 1984 c 175 s 6;  
 (21) RCW 43.31.387 and 1985 c 466 s 31 & 1984 c 175 s 8;  
 (22) RCW 43.31.430 and 1989 c 423 s 2;  
 (23) RCW 43.31.432 and 1989 c 423 s 3;  
 (24) RCW 43.31.434 and 1989 c 423 s 6;  
 (25) RCW 43.31.436 and 1989 c 423 s 7;  
 (26) RCW 43.31.438 and 1989 c 423 s 8;  
 (27) RCW 43.31.440 and 1989 c 423 s 9;  
 (28) RCW 43.31.442 and 1989 c 423 s 10;  
 (29) RCW 43.31.790 and 1975 1st ex.s. c 292 s 2 & 1965 c 148 s 1;  
 (30) RCW 43.63A.020 and 1986 c 266 s 136, 1984 c 125 s 2, & 1967 c 74 s 2;  
 (31) RCW 43.63A.030 and 1984 c 125 s 1 & 1967 c 74 s 3;  
 (32) RCW 43.63A.040 and 1984 c 125 s 3, 1975 c 40 s 10, & 1967 c 74 s 4;  
 (33) RCW 43.63A.050 and 1967 c 74 s 5;  
 (34) RCW 43.63A.060 and 1987 c 505 s 32, 1984 c 125 s 4, & 1967 c 74 s 6;  
 (35) RCW 43.63A.065 and 1992 c 198 s 7, 1990 1st ex.s. c 17 s 70, 1986 c 266 s 137, & 1984 c 125 s 5;  
 (36) RCW 43.63A.078 and 1987 c 505 s 33 & 1984 c 125 s 7;  
 (37) RCW 43.63A.095 and 1984 c 125 s 8;  
 (38) RCW 43.63A.100 and 1984 c 125 s 9 & 1967 c 74 s 10;  
 (39) RCW 43.63A.130 and 1983 c 52 s 6, 1981 c 157 s 6, & 1967 c 74 s 13;  
 (40) RCW 43.63A.140 and 1967 c 74 s 14;  
 (41) RCW 43.63A.210 and 1985 c 85 s 1;  
 (42) RCW 43.63A.560 and 1990 1st ex.s. c 17 s 67;  
 (43) RCW 43.165.020 and 1985 c 229 s 2;  
 (44) RCW 43.165.030 and 1987 c 195 s 13 & 1985 c 229 s 3;  
 (45) RCW 43.165.040 and 1985 c 229 s 4;  
 (46) RCW 43.165.050 and 1985 c 229 s 5;  
 (47) RCW 43.165.060 and 1985 c 229 s 6;  
 (48) RCW 43.165.070 and 1985 c 229 s 7;  
 (49) RCW 43.165.080 and 1987 c 195 s 14 & 1985 c 229 s 8;  
 (50) RCW 43.165.090 and 1985 c 229 s 9;  
 (51) RCW 43.165.100 and 1985 c 229 s 10;  
 (52) RCW 43.165.900 and 1985 c 229 s 14; and  
 (53) RCW 43.165.901 and 1985 c 229 s 15.

**NEW SECTION. Sec. 83.** Captions used in this chapter do not constitute part of the law.

**NEW SECTION. Sec. 84.** Sections 1 through 7, 9 through 16, 79, and 83 of this act shall constitute a new chapter in Title 43 RCW.

**NEW SECTION. Sec. 85.** Sections 80 and 81 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

**NEW SECTION. Sec. 86.** Sections 1 through 7, 9 through 79, 82, and 83 of this act shall take effect July 1, 1994.

**NEW SECTION. Sec. 87.** 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. 88.** (1) Wherever the name of the director or the department of community development or the director or the department of trade and economic development is changed to the director of community and economic development or the community and economic development department, rename the director and the department as the director of community, trade, and economic development or the department of community, trade, and economic development.

(2) The code reviser shall incorporate the new director and department names into the striking amendment (H-2574.2/93) before the striking amendment is delivered to the Senate.

Passed the Senate April 22, 1993.

Passed the House April 21, 1993.

Approved by the Governor May 10, 1993.

Filed in Office of Secretary of State May 10, 1993.

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## CHAPTER 281

[Engrossed Substitute House Bill 2054]

### CIVIL SERVICE REFORM

**Effective Date:** 7/25/93 - Except Sections 1 through 66 & 68 through 71 which take effect on 7/1/93 & Section 67 which takes effect on 7/1/97

AN ACT Relating to state government; amending RCW 28B.12.060, 34.05.030, 34.12.020, 41.04.340, 41.04.670, 41.06.030, 41.06.070, 41.06.076, 41.06.079, 41.06.093, 41.06.110, 41.06.130, 41.06.150, 41.06.155, 41.06.160, 41.06.163, 41.06.170, 41.06.186, 41.06.196, 41.06.280, 41.06.340, 41.06.350, 41.06.450, 41.06.475, 41.48.140, 41.50.804, 41.64.090, 42.16.010, 42.17.2401, 43.01.170, 43.03.028, 43.03.305, 43.06.410, 43.06.425, 43.06.430, 43.33A.100, 43.43.832, 43.60A.906, 43.105.052, 43.131.090, 48.03.060, 49.46.010, 49.74.020, 49.74.030, 50.13.060, 70.24.300, 70.87.120, 72.01.210, 72.02.045, 72.09.220, 72.19.050, 74.09.150, and 88.46.92'; reenacting and amending RCW 41.06.020; adding new sections to chapter 41.06 RCW; creating new sections; recodifying RCW 28B.16.240; decodifying RCW 41.06.230, 41.06.240, 41.06.310, and 41.64.900; repealing RCW 28B.16.010, 28B.16.020, 28B.16.030, 28B.16.040, 28B.16.041, 28B.16.042, 28B.16.043, 28B.16.060, 28B.16.070, 28B.16.080, 28B.16.090, 28B.16.100, 28B.16.101, 28B.16.105, 28B.16.110, 28B.16.112, 28B.16.113, 28B.16.116, 28B.16.120, 28B.16.130, 28B.16.140, 28B.16.150, 28B.16.160, 28B.16.170, 28B.16.180, 28B.16.190, 28B.16.200, 28B.16.210, 28B.16.220, 28B.16.230, 28B.16.255, 28B.16.265, 28B.16.275, 28B.16.300, 28B.16.900, 28B.16.910, 28B.16.920, 28B.16.930, and 41.06.430; providing effective dates; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The higher education personnel board and the state personnel board are abolished and their powers, duties, and functions are transferred to the Washington personnel resources board. All references to the director or the higher education personnel board or the state personnel board in the Revised Code of Washington shall be construed to mean the director of the Washington personnel resources board or the Washington personnel resources board.

**NEW SECTION. Sec. 2.** All reports, documents, surveys, books, records, files, papers, or written material in the possession of the higher education personnel board and the state personnel board shall be delivered to the custody of the Washington personnel resources board. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the higher education personnel board and the state personnel board shall be made available to the Washington personnel resources board. All funds, credits, or other assets held by the higher education personnel board and the state personnel board shall be assigned to the Washington personnel resources board.

Any appropriations made to the higher education personnel board and the state personnel board shall, on the effective date of this section, be transferred and credited to the Washington personnel resources board.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

**NEW SECTION. Sec. 3.** All employees of the higher education personnel board and the state personnel board are transferred to the jurisdiction of the Washington personnel resources board. All employees classified under chapter 28B.16 RCW on June 30, 1993, or chapter 41.06 RCW, the state civil service law, are assigned to the Washington personnel resources board to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

**NEW SECTION. Sec. 4.** All rules of the higher education personnel board and the state personnel board shall be continued until acted upon by the Washington personnel resources board. All pending business shall be continued until acted upon by the Washington personnel resources board. All existing contracts and obligations shall remain in full force and shall be performed by the Washington personnel resources board.

**NEW SECTION. Sec. 5.** The transfer of the powers, duties, functions, and personnel of the higher education personnel board and the state personnel board



shall not affect the validity of any act performed prior to the effective date of this section.

**NEW SECTION.** Sec. 6. If apportionments of budgeted funds are required because of the transfers directed by sections 2 through 5 of this act, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**NEW SECTION.** Sec. 7. Nothing contained in sections 1 through 6 of this act may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law.

**NEW SECTION.** Sec. 8. A new section is added to chapter 41.06 RCW to read as follows:

For purposes of this chapter, "manager" means any employee who:

(1) Formulates state-wide policy or directs the work of an agency or agency subdivision;

(2) Is responsible to administer one or more state-wide policies or programs of an agency or agency subdivision;

(3) Manages, administers, and controls a local branch office of an agency or agency subdivision, including the physical, financial, or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information, or the preparation and administration of budgets; or

(5) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

**NEW SECTION.** Sec. 9. A new section is added to chapter 41.06 RCW to read as follows:

(1) Except as provided in RCW 41.06.070, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in section 8 of this act. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted by the board for other employees, and to the extent that the rules

adopted apply only to managers shall take precedence over rules adopted by the board, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system consistent with the policy set forth in RCW 41.06.150(17). The system shall provide flexibility in setting and changing salaries;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

**NEW SECTION.** Sec. 10. A new section is added to chapter 41.06 RCW to read as follows:

Each institution of higher education and each related board shall designate an officer who shall perform duties as personnel officer. The personnel officer at each institution or related board shall direct, supervise, and manage administrative and technical personnel activities for the classified service at the institution or related board consistent with policies established by the institution or related board and in accordance with the provisions of this chapter and the rules adopted under this chapter. Institutions may undertake jointly with one or more other institutions to appoint a person qualified to perform the duties of personnel officer, provide staff and financial support and may engage consultants to assist in the performance of specific projects. The services of the department of

personnel may also be used by the institutions or related boards pursuant to RCW 41.06.080.

The state board for community and technical colleges shall have general supervision and control over activities undertaken by the various community colleges pursuant to this section.

**NEW SECTION.** **Sec. 11.** A new section is added to chapter 41.06 RCW to read as follows:

Rules adopted by the board shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the board, of the following:

- (1) Appointment, promotion, and transfer of employees;
- (2) Dismissal, suspension, or demotion of an employee;
- (3) Examinations for all positions in the competitive and noncompetitive service;
- (4) Probationary periods of six to twelve months and rejection of probationary employees;
- (5) Sick leaves and vacations;
- (6) Hours of work;
- (7) Layoffs when necessary and subsequent reemployment;
- (8) Allocation and reallocation of positions within the classification plans;
- (9) Training programs; and
- (10) Maintenance of personnel records.

**NEW SECTION.** **Sec. 12.** A new section is added to chapter 41.06 RCW to read as follows:

- (1) The legislature recognizes that:
  - (a) The labor market and the state government work force are diverse in terms of gender, race, ethnicity, age, and the presence of disabilities.
  - (b) The state's personnel resource and management practices must be responsive to the diverse nature of its work force composition.
  - (c) Managers in all agencies play a key role in the implementation of all critical personnel policies.

It is therefore the policy of the state to create an organizational culture in state government that respects and values individual differences and encourages the productive potential of every employee.

- (2) To implement this policy, the department shall:
  - (a) In consultation with agencies, employee organizations, employees, institutions of higher education, and related boards, review civil service rules and related policies to ensure that they support the state's policy of valuing and managing diversity in the workplace;
  - (b) In consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop model policies, procedures, and technical information to be made available to such entities for the support of workplace diversity programs, including, but not limited to:

- (i) Voluntary mentorship programs;
  - (ii) Alternative testing practices for persons of disability where deemed appropriate;
  - (iii) Career counseling;
  - (iv) Training opportunities, including management and employee awareness and skills training, English as a second language, and individual tutoring;
  - (v) Recruitment strategies;
  - (vi) Management performance appraisal techniques that focus on valuing and managing diversity in the workplace; and
  - (vii) Alternative work arrangements;
- (c) In consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop training programs for all managers to enhance their ability to implement diversity policies and to provide a thorough grounding in all aspects of the state civil service law and merit system rules, and how the proper implementation and application thereof can facilitate and further the mission of the agency.
- (3) The department shall coordinate implementation of this section with the office of financial management and institutions of higher education and related boards to reduce duplication of effort.

**NEW SECTION.** Sec. 13. A new section is added to chapter 41.06 RCW to read as follows:

Meaningful and effective involvement of employees and their representatives is essential to the efficient and effective delivery of state government services. To accomplish this, agencies shall use joint employee-management committees to collaborate on the desired goals of streamlined organizational structures, continuous improvement in all systems and processes, empowerment of line level employees to solve workplace and system delivery problems, managers functioning as coaches and facilitators, and employee training and development as an investment in the future. If employees are represented by an exclusive bargaining representative, the representative shall select the employee committee members and also be on the committee. In addition, the committees shall be used for improvement of the quality of work life for state employees resulting in more productive and efficient service delivery to the general public and customers of state government. Nothing in this section supplants any collective bargaining process or provision.

Sec. 14. RCW 28B.12.060 and 1987 c 330 s 202 are each amended to read as follows:

The higher education coordinating board shall adopt rules (~~(and regulations)~~) as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules (~~(and regulations)~~) shall include provisions designed to make employment under such work-study program reasonably available, to the extent of available funds,

to all eligible students in eligible post-secondary institutions in need thereof. Such rules ~~((and regulations))~~ shall include:

(1) Providing work under the college work-study program which will not result in the displacement of employed workers or impair existing contracts for services.

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology.

(3) Placing priority on the securing of work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.011 through 28B.15.014.

(4) Provisions to assure that in the state institutions of higher education utilization of this student work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter ~~((28B-16))~~ 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the ~~((higher education))~~ Washington personnel resources board's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service.

**Sec. 15.** RCW 34.05.030 and 1989 c 175 s 2 are each amended to read as follows:

(1) This chapter shall not apply to:

(a) The state militia, or

(b) The board of clemency and pardons, or

(c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the ~~((state))~~ Washington personnel resources board, ~~((the higher education personnel board,))~~ the director of personnel, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the Administrative Procedure Act, shall be subject to the entire act.

**Sec. 16.** RCW 34.12.020 and 1989 c 175 s 33 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Office" means the office of administrative hearings.

(2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.

(3) "Hearing" means an adjudicative proceeding within the meaning of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.

(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the ~~((state personnel board, the higher education))~~ Washington personnel resources board, the public employment relations commission, the personnel appeals board, and the board of tax appeals.

**Sec. 17.** RCW 41.04.340 and 1991 c 249 s 1 are each amended to read as follows:

(1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional

universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave.

(4) Pursuant to this subsection, in lieu of cash remuneration the state may, with equivalent funds, provide eligible employees with a benefit plan providing for reimbursement of medical expenses. The committee for deferred compensation shall develop any benefit plan established under this subsection, but may offer and administer the plan only if (a) each eligible employee has the option of whether to receive cash remuneration or to have his or her employer transfer equivalent funds to the plan; and (b) the committee has received an opinion from the United States internal revenue service stating that participating employees, prior to the time of receiving reimbursement for expenses, will incur no United States income tax liability on the amount of the equivalent funds transferred to the plan.

(5) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

(6) With the exception of subsection ~~((3))~~ (4) of this section, this section shall be administered, and rules shall be ~~((promulgated))~~ adopted to carry out its purposes, by the ~~((state personnel board and the higher education))~~ Washington personnel resources board for persons subject to chapter ~~((s))~~ 41.06 ~~((and 28B.16))~~ RCW ~~((, respectively, and by their respective personnel authorities for other eligible employees))~~: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

(7) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

**Sec. 18.** RCW 41.04.670 and 1990 c 23 s 3 are each amended to read as follows:

The ~~((state personnel board, the higher education))~~ Washington personnel resources board ~~((s))~~ and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing

appropriate parameters for the program which are consistent with the provisions of RCW 41.04.650 through 41.04.665; (2) providing for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with RCW 41.04.665(5); (3) establishing procedures to ensure that the program does not significantly increase the cost of providing leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review.

**Sec. 19.** RCW 41.06.020 and 1985 c 461 s 1 and 1985 c 365 s 3 are each reenacted and amended to read as follows:

Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section.

(1) "Agency" means an office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(2) "Board" means the ((state)) Washington personnel resources board established under the provisions of RCW 41.06.110, except that this definition does not apply to the words "board" or "boards" when used in RCW 41.06.070.

(3) "Classified service" means all positions in the state service subject to the provisions of this chapter.

(4) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

(5) "Comparable worth" means the provision of similar salaries for positions that require or impose similar responsibilities, judgments, knowledge, skills, and working conditions.

(6) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required.

(7) "Department" means an agency of government that has as its governing officer a person, or combination of persons such as a commission, board, or council, by law empowered to operate the agency responsible either to (a) no other public officer or (b) the governor.

(8) "Career development" means the progressive development of employee capabilities to facilitate productivity, job satisfaction, and upward mobility through work assignments as well as education and training that are both state-sponsored and are achieved by individual employee efforts, all of which shall be consistent with the needs and obligations of the state and its agencies.

(9) "Training" means activities designed to develop job-related knowledge and skills of employees.



(10) "Director" means the director of personnel appointed under the provisions of RCW 41.06.130.

(11) "Affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system.

(12) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(13) "Related boards" means the state board for community and technical colleges; and such other boards, councils, and commissions related to higher education as may be established.

**Sec. 20.** RCW 41.06.030 and 1961 c 1 s 3 are each amended to read as follows:

A department of personnel, governed by ~~((a--state))~~ the Washington personnel resources board and administered by a director of personnel, is hereby established as a separate agency within the state government.

**Sec. 21.** RCW 41.06.070 and 1990 c 60 s 101 are each amended to read as follows:

(1) The provisions of this chapter do not apply to:

~~((4))~~ (a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, legislative budget committee, statute law committee, and any interim committee of the legislature;

~~((2))~~ (b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

~~((3))~~ (c) Officers, academic personnel, and employees of ~~((state institutions of higher education, the state board for community))~~ technical colleges ~~((education, and the higher education personnel board));~~

~~((4))~~ (d) The officers of the Washington state patrol;

~~((5))~~ (e) Elective officers of the state;

~~((6))~~ (f) The chief executive officer of each agency;

~~((7))~~ (g) In the departments of employment security, fisheries, social and health services, the director and ~~((his))~~ the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

~~((8))~~ (h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

~~((a))~~ (i) All members of such boards, commissions, or committees;

~~((b))~~ (ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: ~~((f))~~ The secretary of the board, commission, or committee; ~~((g))~~ the chief executive officer of the board, commission, or committee; and ~~((h))~~ the confidential secretary of the chief executive officer of the board, commission, or committee;

~~((e))~~ (iii) If the members of the board, commission, or committee serve on a full-time basis: ~~((i))~~ The chief executive officer or administrative officer as designated by the board, commission, or committee; and ~~((j))~~ a confidential secretary to the ~~((chairman))~~ chair of the board, commission, or committee;

~~((d))~~ (iv) If all members of the board, commission, or committee serve ex officio: ~~((k))~~ The chief executive officer; and ~~((l))~~ the confidential secretary of such chief executive officer;

~~((9))~~ (i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

~~((10))~~ (j) Assistant attorneys general;

~~((11))~~ (k) Commissioned and enlisted personnel in the military service of the state;

~~((12))~~ (l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the ~~((state personnel))~~ board ~~((or the board having jurisdiction))~~;

~~((13))~~ (m) The public printer or to any employees of or positions in the state printing plant;

~~((14))~~ (n) Officers and employees of the Washington state fruit commission;

~~((15))~~ (o) Officers and employees of the Washington state apple advertising commission;

~~((16))~~ (p) Officers and employees of the Washington state dairy products commission;

~~((17))~~ (q) Officers and employees of the Washington tree fruit research commission;

~~((18))~~ (r) Officers and employees of the Washington state beef commission;

~~((19))~~ (s) Officers and employees of any commission formed under ~~((the provisions of chapter 191, Laws of 1955, and))~~ chapter 15.66 RCW;

~~((20))~~ (t) Officers and employees of the state wheat commission formed under ~~((the provisions of chapter 87, Laws of 1961-))~~chapter 15.63 RCW~~((g))~~;

~~((21))~~ (u) Officers and employees of agricultural commissions formed under ~~((the provisions of chapter 256, Laws of 1961-))~~chapter 15.65 RCW~~((g))~~;

~~((22))~~ (v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

~~((23))~~ (w) Liquor vendors appointed by the Washington state liquor control board pursuant to RCW 66.08.050: PROVIDED, HOWEVER, That rules ~~((and regulations))~~ adopted by the ~~((state))~~ Washington personnel resources board pursuant to RCW 41.06.150 regarding the basis for, and procedures to be

followed for, the dismissal, suspension, or demotion of an employee, and appeals therefrom shall be fully applicable to liquor vendors except those part time agency vendors employed by the liquor control board when, in addition to the sale of liquor for the state, they sell goods, wares, merchandise, or services as a self-sustaining private retail business;

~~((24))~~ (x) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

~~((25))~~ (y) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

~~((26))~~ (z) All employees of the marine employees' commission;

~~((27))~~ (aa) Up to a total of five senior staff positions of the western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection shall expire on June 30, 1997;

~~((28))~~ (2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice-presidents and their confidential secretaries, administrative and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) Student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board, employed by institutions of higher education and related boards;

(c) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training, and principal assistants to executive heads of major administrative or academic divisions, as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(d) Printing craft employees in the department of printing at the University of Washington;

(3) In addition to the exemptions specifically provided by this chapter, the ~~((state))~~ Washington personnel resources board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the Washington personnel resources board stating the reasons for requesting such exemptions. The Washington personnel resources board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the Washington personnel resources board shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed ~~((one hundred eighty seven))~~ one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor. The ~~((state))~~ Washington personnel resources board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted under subsections ~~((24), (25), and (28))~~ (1) (x) and (y) and (2) of this section, together with the reasons for such exemptions.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsection ~~((s-10))~~ (1) (j) through ~~((22))~~ (v) of this section, shall be determined by the ~~((state))~~ Washington personnel resources board.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

**Sec. 22.** RCW 41.06.076 and 1980 c 73 s 1 are each amended to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of social and health services to the secretary; the secretary's executive assistant, if any; not to exceed six assistant secretaries, thirteen division directors, six regional directors; one confidential secretary for each of the above-named officers; not to exceed six bureau chiefs; and all superintendents of institutions of which the average daily population equals or exceeds one hundred residents: PROVIDED, That each such confidential secretary must meet the minimum qualifications for the class of secretary II as determined by the ((state)) Washington personnel resources board.

**Sec. 23.** RCW 41.06.079 and 1985 c 178 s 1 are each amended to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of transportation to the secretary, a deputy secretary, an administrative assistant to the secretary, if any, one assistant secretary for each division designated pursuant to RCW 47.01.081, one confidential secretary for each of the above-named officers, up to six transportation district administrators and one confidential secretary for each district administrator, up to six additional new administrators or confidential secretaries designated by the secretary of the department of transportation and approved by the ((state)) Washington personnel resources board pursuant to the provisions of RCW ((41.06.070(26))) 41.06.070(1)(z), the legislative liaison for the department, the state construction engineer, the state aid engineer, the personnel manager, the state project development engineer, the state maintenance and operations engineer, one confidential secretary for each of the last-named five positions, and a confidential secretary for the public affairs administrator. The individuals appointed under this section shall be exempt from the provisions of the state civil service law, and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for individuals exempt from the operation of the state civil service law.

**Sec. 24.** RCW 41.06.093 and 1990 c 14 s 1 are each amended to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the Washington state patrol to confidential secretaries of agency bureau chiefs, or their functional equivalent, and a confidential secretary for the chief of staff: PROVIDED, That each confidential secretary must meet the minimum qualifications for the class of secretary II as determined by the ((state)) Washington personnel resources board.

**Sec. 25.** RCW 41.06.110 and 1984 c 287 s 69 are each amended to read as follows:

(1) There is hereby created a ((state)) Washington personnel resources board composed of three members appointed by the governor, subject to confirmation

by the senate. ~~((The first such board shall be appointed within thirty days after December 8, 1960, for terms of two, four, and six years.))~~ The members of the personnel board serving June 30, 1993, shall be the members of the Washington personnel resources board, and they shall complete their terms as under the personnel board. Each odd-numbered year thereafter the governor shall appoint a member for a six-year term. Each member shall continue to hold office after the expiration of the member's term until a successor has been appointed. Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed;

(2) Each member of the board shall be compensated in accordance with RCW 43.03.250. The members of the board may receive any number of daily payments for official meetings of the board actually attended. Members of the board shall also be reimbursed for travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(3) At its first meeting following the appointment of all of its members, and annually thereafter, the board shall elect a ~~((chairman))~~ chair and ~~((vice chairman))~~ vice-chair from among its members to serve one year. The presence of at least two members of the board shall constitute a quorum to transact business. A written public record shall be kept by the board of all actions of the board. The director ~~((of personnel))~~ shall serve as secretary.

(4) The board may appoint and compensate hearing officers to hear and conduct appeals until December 31, 1982. Such compensation shall be paid on a contractual basis for each hearing, in accordance with the provisions of chapter 43.88 RCW and rules adopted pursuant thereto, as they relate to personal service contracts.

**Sec. 26.** RCW 41.06.130 and 1982 1st ex.s. c 53 s 3 are each amended to read as follows:

The office of director of personnel is hereby established.

(1) ~~((Within ninety days after December 8, 1960, a director of personnel shall be appointed. The merit system director then serving under RCW 50.12.030, whose position is terminated by this chapter, may serve as director of personnel hereunder until a permanent director of personnel is appointed as herein provided, and may be appointed as director of personnel by the governor alone; or the governor may fill the position in the manner hereinafter provided for subsequent vacancies therein on the basis of competitive examination, in conformance with board rules for competitive examinations, for which examinations the merit system director is eligible.~~

~~((2))~~ The director of personnel shall be appointed by the governor ~~((from a list of three names submitted to him by the board with its recommendations. The names on such list shall be those of the three standing highest upon~~

~~competitive examination conducted by a committee of three persons appointed by the board solely for that purpose whenever the position is vacant. Only persons with substantial experience in the field of personnel management are eligible to take such examination)).~~ The governor shall consult with, but shall not be obligated by recommendations of the board. The director's appointment shall be subject to confirmation by the senate.

~~((3))~~ (2) The director of personnel ((is removable for cause by)) shall serve at the pleasure of the governor ((with the approval of a majority of the board or by a majority of the board)).

~~((4))~~ (3) The director of personnel shall direct and supervise all the department of personnel's administrative and technical activities in accordance with the provisions of this chapter and the rules ((and regulations approved and promulgated thereunder. He)) adopted under it. The director shall prepare for consideration by the board proposed rules ((and regulations)) required by this chapter. ((His)) The director's salary shall be fixed by the ((board)) governor.

~~((5))~~ (4) The director of personnel may delegate to any agency the authority to perform administrative and technical personnel activities if the agency requests such authority and the director of personnel is satisfied that the agency has the personnel management capabilities to effectively perform the delegated activities. The director of personnel shall prescribe standards and guidelines for the performance of delegated activities. If the director of personnel determines that an agency is not performing delegated activities within the prescribed standards and guidelines, the director shall withdraw the authority from the agency to perform such activities.

**Sec. 27.** RCW 41.06.150 and 1990 c 60 s 103 are each amended to read as follows:

The board shall adopt rules, consistent with the purposes and provisions of this chapter, as now or hereafter amended, and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

- (1) The reduction, dismissal, suspension, or demotion of an employee;
- (2) Certification of names for vacancies, including departmental promotions, with the number of names equal to ~~((four))~~ six more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists: PROVIDED, That when other applicants have scores equal to the lowest score among the names certified, their names shall also be certified;
- (3) Examinations for all positions in the competitive and noncompetitive service;
- (4) Appointments;
- (5) Training and career development;
- (6) Probationary periods of six to twelve months and rejections ~~((therein))~~ of probationary employees, depending on the job requirements of the class, except that entry level state park rangers shall serve a probationary period of twelve months;

(7) Transfers;

(8) Sick leaves and vacations;

(9) Hours of work;

(10) Layoffs when necessary and subsequent reemployment, both according to seniority;

(11) Determination of appropriate bargaining units within any agency: **PROVIDED**, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees;

(12) Certification and decertification of exclusive bargaining representatives: **PROVIDED**, That after certification of an exclusive bargaining representative and upon the representative's request, the director shall hold an election among employees in a bargaining unit to determine by a majority whether to require as a condition of employment membership in the certified exclusive bargaining representative on or after the thirtieth day following the beginning of employment or the date of such election, whichever is the later, and the failure of an employee to comply with such a condition of employment constitutes cause for dismissal: **PROVIDED FURTHER**, That no more often than once in each twelve-month period after expiration of twelve months following the date of the original election in a bargaining unit and upon petition of thirty percent of the members of a bargaining unit the director shall hold an election to determine whether a majority wish to rescind such condition of employment: **PROVIDED FURTHER**, That for purposes of this clause, membership in the certified exclusive bargaining representative is satisfied by the payment of monthly or other periodic dues and does not require payment of initiation, reinstatement, or any other fees or fines and includes full and complete membership rights: **AND PROVIDED FURTHER**, That in order to safeguard the right of nonassociation of public employees, based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member, such public employee shall pay to the union, for purposes within the program of the union as designated by such employee that would be in harmony with his or her individual conscience, an amount of money equivalent to regular union dues minus any included monthly premiums for union-sponsored insurance programs, and such employee shall not be a member of the union but is entitled to all the representation rights of a union member;

(13) Agreements between agencies and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion;

(14) Written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization:



PROVIDED, That nothing contained herein permits or grants to any employee the right to strike or refuse to perform his or her official duties;

(15) Adoption and revision of a comprehensive classification plan for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position;

(16) Allocation and reallocation of positions within the classification plan;

(17) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units but the rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and that, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located, such adoption and revision subject to approval by the director of financial management in accordance with the provisions of chapter 43.88 RCW;

(18) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service;

(19) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their ~~((widows))~~ surviving spouses by giving such eligible veterans and their ~~((widows))~~ surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the board, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given: PROVIDED, HOWEVER, That the ~~((widow))~~ surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service: PROVIDED FURTHER, That for the purposes of this section "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month;

(20) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the board may not authorize such delegation to any position lower than the head of a major subdivision of the agency;

(21) Assuring persons who are or have been employed in classified positions under chapter 28B.16 RCW before July 1, 1993, will be eligible for employment, reemployment, transfer, and promotion in respect to classified positions covered by this chapter;

(22) Affirmative action in appointment, promotion, transfer, recruitment, training, and career development; development and implementation of affirmative action goals and timetables; and monitoring of progress against those goals and timetables.

The board shall consult with the human rights commission in the development of rules pertaining to affirmative action. The department of personnel shall transmit a report annually to the human rights commission which states the progress each state agency has made in meeting affirmative action goals and timetables.

**Sec. 28.** RCW 41.06.155 and 1983 1st ex.s. c 75 s 6 are each amended to read as follows:

Salary changes necessary to achieve comparable worth shall be implemented during the 1983-85 biennium under a schedule developed by the department (~~in cooperation with the higher education personnel board~~). Increases in salaries and compensation solely for the purpose of achieving comparable worth shall be made at least annually. Comparable worth for the jobs of all employees under this chapter shall be fully achieved not later than June 30, 1993.

**Sec. 29.** RCW 41.06.160 and 1985 c 94 s 2 are each amended to read as follows:

In preparing classification and salary schedules as set forth in RCW 41.06.150 as now or hereafter amended the department of personnel shall give full consideration to prevailing rates in other public employment and in private employment in this state. For this purpose the department shall undertake comprehensive salary and fringe benefit surveys (~~to be planned and conducted on a joint basis with the higher education personnel board~~), with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. In the year prior to the convening of each one hundred five day regular session during which a comprehensive salary and fringe benefit survey is not conducted, the department shall plan and conduct (~~on a joint basis with the higher education personnel board~~) a trend salary and fringe benefit survey. This survey shall measure average salary and fringe benefit movement for broad occupational groups which has occurred since the last comprehensive salary and fringe benefit survey was conducted. The results of each comprehensive and trend salary and fringe benefit survey shall be completed and forwarded by September 30 with a recommended state salary schedule to the governor and director of financial management for their use in preparing budgets to be submitted to the succeeding legislature. A copy of the data and supporting documentation shall be furnished

by the department of personnel to the standing committees for appropriations of the senate and house of representatives.

In the case of comprehensive salary and fringe benefit surveys, the department shall furnish the following supplementary data in support of its recommended salary schedule:

(1) A total dollar figure which reflects the recommended increase or decrease in state salaries as a direct result of the specific salary and fringe benefit survey that has been conducted and which is categorized to indicate what portion of the increase or decrease is represented by salary survey data and what portion is represented by fringe benefit survey data;

(2) An additional total dollar figure which reflects the impact of recommended increases or decreases to state salaries based on other factors rather than directly on prevailing rate data obtained through the survey process and which is categorized to indicate the sources of the requests for deviation from prevailing rates and the reasons for the changes;

(3) A list of class codes and titles indicating recommended monthly salary ranges for all state classes under the control of the department of personnel with(~~(~~

~~(a))~~ those salary ranges which do not substantially conform to the prevailing rates developed from the salary and fringe benefit survey distinctly marked and an explanation of the reason for the deviation included; ~~((and~~

~~(b) Those department of personnel classes which are substantially the same as classes being used by the higher education personnel board clearly marked to show the commonality of the classes between the two jurisdictions;))~~

(4) A supplemental salary schedule which indicates the additional salary to be paid state employees for hazardous duties or other considerations requiring extra compensation under specific circumstances. Additional compensation for these circumstances shall not be included in the basic salary schedule but shall be maintained as a separate pay schedule for purposes of full disclosure and visibility; and

(5) A supplemental salary schedule which indicates those cases where the board determines that prevailing rates do not provide similar salaries for positions that require or impose similar responsibilities, judgment, knowledge, skills, and working conditions. This supplementary salary schedule shall contain proposed salary adjustments necessary to eliminate any such dissimilarities in compensation. Additional compensation needed to eliminate such salary dissimilarities shall not be included in the basic salary schedule but shall be maintained as a separate salary schedule for purposes of full disclosure and visibility.

It is the intention of the legislature that requests for funds to support recommendations for salary deviations from the prevailing rate survey data shall be kept to a minimum, and that the requests be fully documented when forwarded by the department of personnel. ~~((Further, it is the intention of the legislature that the department of personnel and the higher education personnel board jointly determine job classes which are substantially common to both~~

~~jurisdictions and that basic salaries for these job classes shall be equal based on salary and fringe benefit survey findings.))~~

Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.17 RCW.

The first comprehensive salary and fringe benefit survey required by this section shall be completed and forwarded to the governor and the director of financial management by September 30, 1986. The first trend salary and fringe benefit survey required by this section shall be completed and forwarded to the governor and the director of financial management by September 30, 1988.

**Sec. 30.** RCW 41.06.163 and 1987 c 185 s 9 are each amended to read as follows:

(1) In the conduct of salary and fringe benefit surveys under RCW 41.06.160 as now or hereafter amended, it is the intention of the legislature that the surveys be undertaken in a manner consistent with statistically accurate sampling techniques. For this purpose, a comprehensive salary and fringe benefit survey plan shall be submitted to the director of financial management, employee organizations, and the standing committees for appropriations of the senate and house of representatives six months before the beginning of each periodic survey required before regular legislative sessions. This comprehensive plan shall include but not be limited to the following:

(a) A complete explanation of the technical, statistical process to be used in the salary and fringe benefit survey including the percentage of accuracy expected from the planned statistical sample chosen for the survey and a definition of the term "prevailing rates" which is to be used in the planned survey;

(b) A comprehensive salary and fringe benefit survey model based on scientific statistical principles which:

(i) Encompasses the interrelationships among the various elements of the survey sample including sources of salary and fringe benefit data by organization type, size, and regional location;

(ii) Is representative of private and public employment in this state;

(iii) Ensures that, wherever practical, data from smaller, private firms are included and proportionally weighted in the survey sample; and

(iv) Indicates the methodology to be used in application of survey data to job classes used by state government;

(c) A prediction of the increase or decrease in total funding requirements expected to result from the pending salary and fringe benefit survey based on consumer price index information and other available trend data pertaining to Washington state salaries and fringe benefits.

(2) Every comprehensive survey plan shall fully consider fringe benefits as an element of compensation in addition to basic salary data. ~~((The plans~~

~~prepared under this section shall be developed jointly by the department of personnel in conjunction with the higher education personnel board established under chapter 28B.16 RCW. All comprehensive salary and fringe benefit survey plans shall be submitted on a joint signature basis by the department of personnel and the higher education personnel board.)~~

(3) Interim or special surveys conducted under RCW 41.06.160 as now or hereafter amended shall conform when possible to the statistical techniques and principles developed for regular periodic surveys under this section.

(4) The term "fringe benefits" as used in this section and in conjunction with salary surveys shall include but not be limited to compensation for:

- (a) Leave time, including vacation, holiday, civil, and personal leave;
- (b) Employer retirement contributions;
- (c) Health and insurance payments, including life, accident, and health insurance, workers' compensation, and sick leave; and
- (d) Stock options, bonuses, and purchase discounts where appropriate.

**Sec. 31.** RCW 41.06.170 and 1981 c 311 s 19 are each amended to read as follows:

(1) The board or director, in the ~~((promulgation))~~ adoption of rules ~~((and regulations))~~ governing suspensions for cause, shall not authorize an appointing authority to suspend an employee for more than fifteen calendar days as a single penalty or more than thirty calendar days in any one calendar year as an accumulation of several penalties. The board or director shall require that the appointing authority give written notice to the employee not later than one day after the suspension takes effect, stating the reasons for and the duration thereof. ~~((The authority shall file a copy of the notice with the director of personnel.))~~

(2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules ~~((and regulations))~~ of the board, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW~~((as now or hereafter amended))~~, or rules ~~((promulgated pursuant thereto))~~ adopted under it, shall have the right to appeal to the personnel appeals board created by RCW 41.64.010 not later than thirty days after the effective date of such action. The employee shall be furnished with specified charges in writing when a reduction, dismissal, suspension, or demotion action is taken. Such appeal shall be in writing.

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal to the personnel appeals board created by RCW 41.64.010 not later than thirty days after the effective date of such action.

(4) An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the personnel appeals board created by RCW 41.64.010. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

**Sec. 32.** RCW 41.06.186 and 1985 c 461 s 5 are each amended to read as follows:

The Washington personnel resources board shall adopt rules designed to terminate the state employment of any employee whose performance is so inadequate as to warrant termination.

**Sec. 33.** RCW 41.06.196 and 1985 c 461 s 6 are each amended to read as follows:

The Washington personnel resources board shall adopt rules designed to remove from supervisory positions those supervisors who in violation of the rules adopted under RCW 41.06.186 have tolerated the continued employment of employees under their supervision whose performance has warranted termination from state employment.

**Sec. 34.** RCW 41.06.280 and 1987 c 248 s 4 are each amended to read as follows:

There is hereby created a fund within the state treasury, designated as the "department of personnel service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the approved allotments of salaries and wages for all positions in the classified service in each of the agencies subject to this chapter (~~(except the institutions of higher learning,))~~) shall be charged to the operations appropriations of each agency and credited to the department of personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the department with funds to meet its anticipated expenditures during the allotment period, including the training requirements in sections 9 and 12 of this act.

The director of personnel shall fix the terms and charges for services rendered by the department of personnel pursuant to RCW 41.06.080, which amounts shall be credited to the department of personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a quarterly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a quarterly basis to the state treasurer and deposited by him in the department of personnel service fund.

Moneys from the department of personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board.

**Sec. 35.** RCW 41.06.340 and 1969 ex.s. c 215 s 13 are each amended to read as follows:

Each and every provision of RCW 41.56.140 through 41.56.190 shall be applicable to this chapter as it relates to state civil service employees and the ((state)) Washington personnel resources board, or its designee, whose final

decision shall be appealable to the ((state)) Washington personnel resources board, which is granted all powers and authority granted to the department of labor and industries by RCW 41.56.140 through 41.56.190.

**Sec. 36.** RCW 41.06.350 and 1969 ex.s. c 152 s 1 are each amended to read as follows:

The ((state)) Washington personnel resources board is authorized to receive federal funds now available or hereafter made available for the assistance and improvement of public personnel administration, which may be expended in addition to the department of personnel service fund established by RCW 41.06.280.

**Sec. 37.** RCW 41.06.450 and 1982 c 208 s 10 are each amended to read as follows:

(1) By January 1, 1983, the Washington personnel resources board shall adopt rules applicable to each agency to ensure that information relating to employee misconduct or alleged misconduct is destroyed or maintained as follows:

(a) All such information determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;

(b) All such information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the agency, shall be promptly destroyed;

(c) All other information shall be retained only so long as it has a reasonable bearing on the employee's job performance or on the efficient and effective management of the agency.

(2) Notwithstanding subsection (1) of this section, an agency may retain information relating to employee misconduct or alleged misconduct if:

(a) The employee requests that the information be retained; or

(b) The information is related to pending legal action or legal action may be reasonably expected to result.

(3) In adopting rules under this section, the Washington personnel resources board shall consult with the public disclosure commission to ensure that the public policy of the state, as expressed in chapter 42.17 RCW, is adequately protected.

**Sec. 38.** RCW 41.06.475 and 1986 c 269 s 2 are each amended to read as follows:

The ((state)) Washington personnel resources board shall adopt rules, in cooperation with the secretary of social and health services, for the background investigation of persons being considered for state employment in positions directly responsible for the supervision, care, or treatment of children or developmentally disabled persons.

**Sec. 39.** RCW 41.48.140 and 1979 c 152 s 3 are each amended to read as follows:

Nothing in RCW 41.48.120 or 41.48.130 shall affect the power of the ((state)) Washington personnel resources board (~~((the higher education personnel board))~~) or any other state personnel authority to establish sick leave (~~((regulations))~~) rules except as may be required under RCW 41.48.120 or 41.48.130: PROVIDED, That each personnel board and personnel authority shall establish the maximum number of working days an employee under its jurisdiction may be absent on account of sickness or accident disability without a medical certificate.

"Personnel authority" as used in this section, means a state agency, board, committee, or similar body having general authority to establish personnel (~~((regulations))~~) rules.

**Sec. 40.** RCW 41.50.804 and 1975-'76 2nd ex.s. c 105 s 17 are each amended to read as follows:

Nothing contained in this chapter shall be construed to alter any existing collective bargaining agreement until any such agreement has expired or until any such bargaining unit has been modified by action of the Washington personnel resources board as provided by law.

**Sec. 41.** RCW 41.64.090 and 1981 c 311 s 10 are each amended to read as follows:

(1) The board shall have jurisdiction to decide appeals filed on or after July 1, 1981, of employees under the jurisdiction of the ((state)) Washington personnel resources board pursuant to RCW 41.06.170, as now or hereafter amended.

(2) The board shall have jurisdiction to decide appeals filed on or after July 1, 1993, of employees of institutions of higher education and related boards under the jurisdiction of the Washington personnel resources board pursuant to RCW 41.06.170. An appeal under this subsection by an employee of an institution of higher education or a related board shall be held in the county in which the institution is located or the county in which the person was employed when the appeal was filed.

**Sec. 42.** RCW 42.16.010 and 1983 1st ex.s. c 28 s 1 are each amended to read as follows:

(1) Except as provided otherwise in subsection (2) of this section, all state officers and employees shall be paid for services rendered from the first day of the month through the fifteenth day of the month and for services rendered from the sixteenth day of the month through the last calendar day of the month. Paydates for these two pay periods shall be established by the director of financial management through the administrative hearing process and the official paydates shall be established six months prior to the beginning of each subsequent calendar year. Under no circumstance shall the paydate be established more than ten days after the pay period in which the wages are



earned except when the designated payday falls on Sunday, in which case the payday shall not be later than the following Monday. Payment shall be deemed to have been made by the established paydates if: (a) The salary warrant is available at the geographic work location at which the warrant is normally available to the employee; or (b) the salary has been electronically transferred into the employee's account at the employee's designated financial institution; or (c) the salary warrants are mailed at least two days before the established payday for those employees engaged in work in remote or varying locations from the geographic location at which the payroll is prepared, provided that the employee has requested payment by mail.

The office of financial management shall develop the necessary policies and operating procedures to assure that all remuneration for services rendered including basic salary, shift differential, standby pay, overtime, penalty pay, salary due based on contractual agreements, and special pay provisions, as provided for by law, Washington personnel resources board rules, agency policy or rule, or contract, shall be available to the employee on the designated payday. Overtime, penalty pay, and special pay provisions may be paid by the next following payday if the postponement of payment is attributable to: The employee's not making a timely or accurate report of the facts which are the basis for the payment, or the employer's lack of reasonable opportunity to verify the claim.

Compensable benefits payable because of separation from state service shall be paid with the earnings for the final period worked unless the employee separating has not provided the agency with the proper notification of intent to terminate.

One-half of the employee's basic monthly salary shall be paid in each pay period. Employees paid on an hourly basis or employees who work less than a full pay period shall be paid for actual salary earned.

(2) Subsection (1) of this section shall not apply in instances where it would conflict with contractual rights or, with the approval of the office of financial management, to short-term, intermittent, noncareer state employees, to student employees of institutions of higher education, and to liquor control agency managers who are paid a percentage of monthly liquor sales.

**Sec. 43.** RCW 42.17.2401 and 1991 c 200 s 404 are each amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the office of marine safety, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site

evaluation council, the director of the energy office, the secretary of the state finance committee, the director of financial management, the director of fisheries, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, (~~the director of the higher education personnel board,~~) the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the director of trade and economic development, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the director of wildlife, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges (~~(education)~~), state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, higher education coordinating board, higher education facilities authority, (~~higher education personnel board,~~) horse racing commission, state housing (finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, liquor control board, lottery commission, marine oversight board, oil and gas conservation committee, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, (~~personnel board,~~) board of pilotage (~~(commissioners)~~) commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, state employees' benefits board, board of tax appeals, transportation commission, University of Washington board of

regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and wildlife commission.

**Sec. 44.** RCW 43.01.170 and 1992 c 234 s 11 are each amended to read as follows:

In order to ensure that the state derives the expected benefits from the early retirement provisions of chapter 234, Laws of 1992, no state agency may hire persons who retire from state service under the provisions of chapter 234, Laws of 1992 as temporary or project employees, as defined by the ((state)) Washington personnel resources board for employees covered under chapter 41.06 RCW ((and by the higher education personnel board for employees covered under chapter 28B.16 RCW)). Exceptions to this section may be granted by written approval from the director of the office of financial management if the director finds that the temporary or project employment of a retiree is necessary to protect the public safety, protect against the loss of federal certification or loss of critical federal funds, or carry out functions so essential to the agency that even temporary suspension or delay of services would have a significant negative impact on the public. At the end of each three-month period in which exceptions are approved, the director shall forward a copy of any approvals, together with justification for the exceptions, to the fiscal committees of the legislature. Each forwarded approval shall include the name of the temporary or project employee, the agency and division or department requesting the employment, duration and cost of the proposed employment, and specific functions and duties to be carried out during the employment. This section shall expire June 30, 1995.

**Sec. 45.** RCW 43.03.028 and 1991 c 3 s 294 are each amended to read as follows:

(1) There is hereby created a state committee on agency officials' salaries to consist of seven members, or their designees, as follows: The president of the University of Puget Sound; the chairperson of the council of presidents of the state's four-year institutions of higher education; the chairperson of the ((State)) Washington personnel resources board; the president of the Association of Washington Business; the president of the Pacific Northwest Personnel Managers' Association; the president of the Washington State Bar Association; and the president of the Washington State Labor Council. If any of the titles or positions mentioned in this subsection are changed or abolished, any person occupying an equivalent or like position shall be qualified for appointment by the governor to membership upon the committee.

(2) The committee shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the board of pharmacy; the capitol historical association and museum; the eastern Washington historical society; the Washington state historical society; the interagency committee for outdoor recreation; the criminal justice training commission; the department of personnel; the state finance committee; the state library; the traffic safety commission; the horse racing commission; the advisory council on vocational education; the public disclosure commission; the state conservation commission; the commission on Hispanic affairs; the commission on Asian-American affairs; the state board for volunteer fire fighters; the transportation improvement board; the public ((employees)) employment relations commission; the forest practices appeals board; and the energy facilities site evaluation council.

The committee shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position.

(3) Committee members shall be reimbursed by the department of personnel for travel expenses under RCW 43.03.050 and 43.03.060.

**Sec. 46.** RCW 43.03.305 and 1986 c 155 s 2 are each amended to read as follows:

There is created a commission to be known as the Washington citizens' commission on salaries for elected officials, to consist of fifteen members appointed by the governor as provided in this section.

(1) Eight of the fifteen commission members shall be selected by lot by the secretary of state from among those registered voters eligible to vote at the general election held in November, 1986, and thereafter from among those registered voters eligible to vote at the time of the selection. One member shall be selected from each congressional district. The secretary shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a congressional district if a person selected from the district declines appointment to the commission.

(2) The remaining seven of the fifteen commission members, all residents of this state, shall be selected jointly by the speaker of the house of representatives and the president of the senate. The persons selected under this subsection shall have had experience in the field of personnel management. Of these seven members, one shall be selected from each of the following five sectors in this state: Private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the two remaining members, one shall be a person recommended to the speaker and the president by the ((chairperson)) chair of the ((state)) Washington personnel resources board

and one shall be a person recommended by majority vote of the presidents of the state's four-year institutions of higher education.

(3) The secretary of state shall forward the names of persons selected under subsection (1) of this section and the speaker of the house of representatives and president of the senate shall forward the names of persons selected under subsection (2) of this section to the governor who shall appoint these persons to the commission. Except as provided in subsection (6) of this section, the names of persons selected for appointment to the commission shall be forwarded to the governor not later than February 15, 1987, and not later than the fifteenth day of February every four years thereafter.

(4) Members shall hold office for terms of four years, and no person may be appointed to more than two such terms. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

(5) No state official, public employee, or lobbyist, or immediate family member of the official, employee, or lobbyist, subject to the registration requirements of chapter 42.17 RCW is eligible for membership on the commission.

As used in this subsection the phrase "immediate family" means the parents, spouse, siblings, children, or dependent relative of the official, employee, or lobbyist whether or not living in the household of the official, employee, or lobbyist.

(6) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as originally provided.

**Sec. 47.** RCW 43.06.410 and 1985 c 442 s 1 are each amended to read as follows:

There is established within the office of the governor the Washington state internship program to assist students and state employees in gaining valuable experience and knowledge in various areas of state government. In administering the program, the governor shall:

(1) Consult with the secretary of state, the director of personnel, (~~the director of the higher education personnel board,~~) the commissioner of the employment security department, and representatives of labor;

(2) Encourage and assist agencies in developing intern positions;

(3) Develop and coordinate a selection process for placing individuals in intern positions. This selection process shall give due regard to the responsibilities of the state to provide equal employment opportunities;

(4) Develop and coordinate a training component of the internship program which balances the need for training and exposure to new ideas with the intern's and agency's need for on-the-job work experience;

- (5) Work with institutions of higher education in developing the program, soliciting qualified applicants, and selecting participants; and
- (6) Develop guidelines for compensation of the participants.

**Sec. 48.** RCW 43.06.425 and 1985 c 442 s 4 are each amended to read as follows:

The ~~((state))~~ Washington personnel resources board ~~((and the higher education personnel board))~~ shall ~~((each))~~ adopt rules to provide that:

(1) Successful completion of an internship under RCW 43.06.420 shall be considered as employment experience at the level at which the intern was placed;

(2) Persons leaving classified or exempt positions in state government in order to take an internship under RCW 43.06.420: (a) Have the right of reversion to the previous position at any time during the internship or upon completion of the internship; and (b) shall continue to receive all fringe benefits as if they had never left their classified or exempt positions;

(3) Participants in the undergraduate internship program who were not public employees prior to accepting a position in the program receive sick leave allowances commensurate with other state employees;

(4) Participants in the executive fellows program who were not public employees prior to accepting a position in the program receive sick and vacation leave allowances commensurate with other state employees.

**Sec. 49.** RCW 43.06.430 and 1985 c 442 s 5 are each amended to read as follows:

The ~~((state))~~ Washington personnel resources board shall adopt rules to provide that persons successfully completing an internship under the executive fellows program created under RCW 43.06.420 are eligible for positions in the career executive program under RCW 41.06.430.

**Sec. 50.** RCW 43.33A.100 and 1981 c 219 s 3 are each amended to read as follows:

The state investment board shall maintain appropriate offices and employ such personnel as may be necessary to perform its duties. Employment by the investment board shall include but not be limited to an executive director, investment officers, and a confidential secretary, which positions are exempt from classified service under chapter 41.06 RCW. Employment of the executive director by the board shall be for a term of three years, and such employment shall be subject to confirmation of the state finance committee: **PROVIDED,** That nothing shall prevent the board from dismissing the director for cause before the expiration of the term nor shall anything prohibit the board, with the confirmation of the state finance committee, from employing the same individual as director in succeeding terms. Compensation levels for the investment officers employed by the investment board shall be established by the ~~((state))~~ Washington personnel resources board.

As of July 1, 1981, all employees classified under chapter 41.06 RCW and engaged in duties assumed by the state investment board on July 1, 1981, are

assigned to the state investment board. The transfer shall not diminish any rights granted these employees under chapter 41.06 RCW nor exempt the employees from any action which may occur thereafter in accordance with chapter 41.06 RCW.

All existing contracts and obligations pertaining to the functions transferred to the state investment board in this 1980 act shall remain in full force and effect, and shall be performed by the board. None of the transfers directed by this 1980 act shall affect the validity of any act performed by a state entity or by any official or employee thereof prior to July 1, 1981.

**Sec. 51.** RCW 43.43.832 and 1990 c 3 s 1102 are each amended to read as follows:

(1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system may disclose, upon the request of a business or organization as defined in RCW 43.43.830, an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.34 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision. When necessary, applicants may be employed on a conditional basis pending completion of such a background investigation.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services, when considering persons for state positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults or when licensing or authorizing such persons or agencies pursuant to its authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to license or regulate a facility which handles vulnerable adults, must consider the information listed in subsection (1) of this section. However, when necessary, persons may be employed on a conditional basis pending completion of the background investigation. The

((state)) Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

**Sec. 52.** RCW 43.60A.906 and 1975-'76 2nd ex.s. c 115 s 16 are each amended to read as follows:

Nothing contained in this chapter shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until any such agreement has expired or until any such bargaining unit has been modified by action of the Washington personnel resources board as provided by law.

**Sec. 53.** RCW 43.105.052 and 1992 c 20 s 10 are each amended to read as follows:

The department shall:

(1) Perform all duties and responsibilities the board delegates to the department, including but not limited to:

- (a) The review of agency acquisition plans and requests; and
- (b) Implementation of state-wide and interagency policies, standards, and guidelines;

(2) Make available information services to state agencies and local governments on a full cost-recovery basis. These services may include, but are not limited to:

- (a) Telecommunications services for voice, data, and video;
- (b) Mainframe computing services;
- (c) Support for departmental and microcomputer evaluation, installation, and use;
- (d) Equipment acquisition assistance, including leasing, brokering, and establishing master contracts;
- (e) Facilities management services for information technology equipment, equipment repair, and maintenance service;
- (f) Negotiation with local cable companies and local governments to provide for connection to local cable services to allow for access to these public and educational channels in the state;
- (g) Office automation services;
- (h) System development services; and
- (i) Training.

These services are for discretionary use by customers and customers may elect other alternatives for service if those alternatives are more cost-effective or provide better service. Agencies may be required to use the backbone network portions of the telecommunications services during an initial start-up period not to exceed three years;

(3) Establish rates and fees for services provided by the department to assure that the services component of the department is self-supporting. A billing rate plan shall be developed for a two-year period to coincide with the budgeting process. The rate plan shall be subject to review at least annually by the



customer oversight committees. The rate plan shall show the proposed rates by each cost center and will show the components of the rate structure as mutually determined by the department and the customer oversight committees. The same rate structure will apply to all user agencies of each cost center. The rate plan and any adjustments to rates shall be approved by the office of financial management. The services component shall not subsidize the operations of the planning component;

(4) With the advice of the information services board and agencies, develop a state strategic information technology plan and performance reports as required under RCW 43.105.160;

(5) Develop plans for the department's achievement of state-wide goals and objectives set forth in the state strategic information technology plan required under RCW 43.105.160. These plans shall address such services as telecommunications, central and distributed computing, local area networks, office automation, and end user computing. The department shall seek the advice of customer oversight committees and the board in the development of these plans;

(6) Under direction of the information services board and in collaboration with the department of personnel, (~~the higher education personnel board,~~) and other agencies as may be appropriate, develop training plans and coordinate training programs that are responsive to the needs of agencies;

(7) Identify opportunities for the effective use of information services and coordinate appropriate responses to those opportunities;

(8) Assess agencies' projects, acquisitions, plans, or overall information processing performance as requested by the board, agencies, the director of financial management, or the legislature. Agencies may be required to reimburse the department for agency-requested reviews;

(9) Develop planning, budgeting, and expenditure reporting requirements, in conjunction with the office of financial management, for agencies to follow;

(10) Assist the office of financial management with budgetary and policy review of agency plans for information services;

(11) Provide staff support from the planning component to the board for:

(a) Meeting preparation, notices, and minutes;

(b) Promulgation of policies, standards, and guidelines adopted by the board;

(c) Supervision of studies and reports requested by the board;

(d) Conducting reviews and assessments as directed by the board;

(12) Be the lead agency in coordinating video telecommunications services for all state agencies and develop, pursuant to board policies, standards and common specifications for leased and purchased telecommunications equipment. The department shall not evaluate the merits of school curriculum, higher education course offerings, or other education and training programs proposed for transmission and/or reception using video telecommunications resources. Nothing in this section shall abrogate or abridge the legal responsibilities of licensees of telecommunications facilities as licensed by the federal communication commission on March 27, 1990; and

(13) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

**Sec. 54.** RCW 43.131.090 and 1983 1st ex.s. c 27 s 4 are each amended to read as follows:

Unless the legislature specifies a shorter period of time, a terminated state agency shall continue in existence until June 30th of the next succeeding year for the purpose of concluding its affairs: PROVIDED, That the powers and authority of the state agency shall not be reduced or otherwise limited during this period. Unless otherwise provided:

(1) All employees of terminated state agencies classified under chapter 41.06 RCW, the state civil service law, shall be transferred as appropriate or as otherwise provided in the procedures adopted by the Washington personnel resources board pursuant to RCW 41.06.150;

(2) All documents and papers, equipment, or other tangible property in the possession of the terminated state agency shall be delivered to the custody of the agency assuming the responsibilities of the terminated agency or if such responsibilities have been eliminated, documents and papers shall be delivered to the state archivist and equipment or other tangible property to the department of general administration;

(3) All funds held by, or other moneys due to, the terminated state agency shall revert to the fund from which they were appropriated, or if that fund is abolished to the general fund;

(4) Notwithstanding the provisions of RCW 34.05.020, all rules made by a terminated state agency shall be repealed, without further action by the state agency, at the end of the period provided in this section, unless assumed and reaffirmed by the agency assuming the related legal responsibilities of the terminated state agency;

(5) All contractual rights and duties of a state agency shall be assigned or delegated to the agency assuming the responsibilities of the terminated state agency, or if there is none to such agency as the governor shall direct.

**Sec. 55.** RCW 48.03.060 and 1981 c 339 s 2 are each amended to read as follows:

(1) Examinations within this state of any insurer domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or ~~((his))~~ the commissioner's examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by him and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) The person examined and liable therefor shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the National Association of Insurance Commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the ~~((state))~~ Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher. Domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by ~~((him))~~ the commissioner.

The commissioner or ~~((his))~~ the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

**Sec. 56.** RCW 49.46.010 and 1989 c 1 s 1 are each amended to read as follows:

As used in this chapter:

- (1) "Director" means the director of labor and industries;
- (2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by ~~((regulations))~~ rules of the director;
- (3) "Employ" includes to permit to work;
- (4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;
- (5) "Employee" includes any individual employed by an employer but shall not include:
  - (a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;
  - (b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;
  - (c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by ~~((regulations))~~ rules of the director. However, those terms shall be defined and delimited by the ~~((state))~~ Washington personnel

~~resources board pursuant to chapter 41.06 RCW ((and the higher education personnel board pursuant to chapter 28B-16 RCW for employees employed under their respective jurisdictions));~~

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

**Sec. 57.** RCW 49.74.020 and 1985 c 365 s 9 are each amended to read as follows:

If the commission reasonably believes that a state agency, an institution of higher education, or the state patrol has failed to comply with an affirmative action rule adopted under RCW (~~(28B-16-100)~~) 41.06.150(~~(7)~~) or 43.43.340, the commission shall notify the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol of the noncompliance, as well as the director of personnel (~~(or the director of the higher education personnel board, whichever is appropriate)~~). The commission shall give the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol an opportunity to be heard on the failure to comply.

**Sec. 58.** RCW 49.74.030 and 1985 c 365 s 10 are each amended to read as follows:

The commission in conjunction with the department of personnel(~~(or the higher education personnel board)~~) or the state patrol, whichever is appropriate, shall attempt to resolve the noncompliance through conciliation. If an agreement is reached for the elimination of noncompliance, the agreement shall be reduced to writing and an order shall be issued by the commission setting forth the terms of the agreement. The noncomplying state agency, institution of higher education, or state patrol shall make a good faith effort to conciliate and make a full commitment to correct the noncompliance with any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW (~~(28B-16-100(20))~~) 41.06.150(21)(~~(7)~~) and 43.43.340(5), whichever is appropriate.

**Sec. 59.** RCW 50.13.060 and 1981 c 177 s 1 are each amended to read as follows:

(1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (7) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) must be satisfied.

(6) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by

federal law. When federal law does not apply to the records or information state law shall control.

(7) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(8) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel (~~and the higher education personnel board~~) shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

**Sec. 60.** RCW 70.24.300 and 1988 c 206 s 607 are each amended to read as follows:

The ((state)) Washington personnel resources board(~~(, the higher education personnel board,)) and each unit of local government shall determine whether any employees under their jurisdiction have a substantial likelihood of exposure in the course of their employment to the human immunodeficiency virus. If so, the agency or unit of government shall adopt rules requiring appropriate training and education for the employees on the prevention, transmission, and treatment of AIDS. The rules shall specifically provide for such training and education for law enforcement, correctional, and health care workers. The ((state)) Washington personnel resources board(~~(, the higher education personnel board,)) and each unit of local government shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for employees.~~~~

**Sec. 61.** RCW 70.87.120 and 1983 c 123 s 13 are each amended to read as follows:

(1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the ((state)) Washington personnel resources board in accordance with chapter 41.06 RCW.

(2) The department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and

may also suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(4) The department may investigate accidents and alleged or apparent violations of this chapter.

**Sec. 62.** RCW 72.01.210 and 1981 c 136 s 69 are each amended to read as follows:

The secretary of corrections shall appoint chaplains for the state correctional institutions for convicted felons; and the secretary of social and health services shall appoint chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts; and the secretary of corrections and the secretary of social and health services shall appoint one or more chaplains for other custodial, correctional and mental institutions under their control. The chaplains so appointed shall have the qualifications and shall be compensated in an amount, as shall hereafter be recommended by the department and approved by the ((state)) Washington personnel resources board.

**Sec. 63.** RCW 72.02.045 and 1988 c 143 s 2 are each amended to read as follows:

The superintendent of each institution has the powers, duties, and responsibilities specified in this section.

(1) Subject to the rules of the department, the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution.

(2) Subject to the rules of the department and the director of the division of prisons or his or her designee and the ((state)) Washington personnel resources board, the superintendent shall appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the confines of the institution either on parole, transfer, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith



purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the original purchase price of the item or, in the case of hand-made goods, the materials used in fabricating the item.

(4) The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall make, amend, and repeal rules for the administration, supervision, discipline, and security of the institution.

(5) When in the superintendent's opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the institution, which shall remain in effect until terminated by the director of the division of prisons or the secretary.

(6) The superintendent shall perform such other duties as may be prescribed.

**Sec. 64.** RCW 72.09.220 and 1981 c 136 s 33 are each amended to read as follows:

Nothing contained in sections 1 through 13 and 16 through 23 of this act may be construed to downgrade any rights of any employee under any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law.

**Sec. 65.** RCW 72.19.050 and 1979 c 141 s 226 are each amended to read as follows:

The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules (~~(and regulations)~~) of the department, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules (~~(and regulations)~~) of the department and the (~~(state)~~) Washington personnel resources board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules (~~(and regulations)~~) governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary.

**Sec. 66.** RCW 74.09.150 and 1959 c 26 s 74.09.150 are each amended to read as follows:

All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the (~~(state)~~) Washington personnel resources board (~~(or its successor)~~).

**Sec. 67.** RCW 88.46.927 and 1991 c 200 s 436 are each amended to read as follows:

Nothing contained in RCW 88.46.921 through 88.46.926 may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law.

**NEW SECTION.** **Sec. 68.** The following acts or parts of acts are each repealed:

- (1) RCW 28B.16.010 and 1969 ex.s. c 36 s 1;
- (2) RCW 28B.16.020 and 1985 c 461 s 8, 1985 c 365 s 2, 1983 1st ex.s. c 75 s 1, 1982 1st ex.s. c 53 s 14, 1977 ex.s. c 169 s 41, & 1969 ex.s. c 36 s 2;
- (3) RCW 28B.16.030 and 1969 ex.s. c 36 s 3;
- (4) RCW 28B.16.040 and 1990 c 60 s 201, 1982 1st ex.s. c 53 s 15, 1977 ex.s. c 94 s 1, & 1969 ex.s. c 36 s 4;
- (5) RCW 28B.16.041 and 1985 c 442 s 9;
- (6) RCW 28B.16.042 and 1985 c 266 s 1;
- (7) RCW 28B.16.043 and 1991 c 238 s 107;
- (8) RCW 28B.16.060 and 1984 c 287 s 63, 1981 c 338 s 19, 1975-'76 2nd ex.s. c 34 s 73, & 1969 ex.s. c 36 s 6;
- (9) RCW 28B.16.070 and 1983 c 23 s 1 & 1969 ex.s. c 36 s 7;
- (10) RCW 28B.16.080 and 1969 ex.s. c 36 s 8;
- (11) RCW 28B.16.090 and 1969 ex.s. c 36 s 9;
- (12) RCW 28B.16.100 and 1990 c 60 s 202;
- (13) RCW 28B.16.101 and 1982 1st ex.s. c 53 s 19 & 1977 ex.s. c 152 s 9;
- (14) RCW 28B.16.105 and 1985 c 461 s 10, 1982 1st ex.s. c 53 s 17, & 1977 ex.s. c 152 s 13;
- (15) RCW 28B.16.110 and 1985 c 94 s 1, 1980 c 11 s 3, 1979 c 151 s 16, 1977 ex.s. c 152 s 10, 1975 1st ex.s. c 122 s 2, & 1969 ex.s. c 36 s 11;
- (16) RCW 28B.16.112 and 1987 c 185 s 3, 1986 c 158 s 4, 1979 c 151 s 17, & 1977 ex.s. c 152 s 11;
- (17) RCW 28B.16.113 and 1977 ex.s. c 152 s 12;
- (18) RCW 28B.16.116 and 1983 1st ex.s. c 75 s 3;
- (19) RCW 28B.16.120 and 1969 ex.s. c 36 s 12;
- (20) RCW 28B.16.130 and 1969 ex.s. c 36 s 13;
- (21) RCW 28B.16.140 and 1969 ex.s. c 36 s 14;
- (22) RCW 28B.16.150 and 1969 ex.s. c 36 s 15;
- (23) RCW 28B.16.160 and 1988 c 202 s 27, 1971 c 81 s 72, & 1969 ex.s. c 36 s 16;
- (24) RCW 28B.16.170 and 1969 ex.s. c 36 s 26;
- (25) RCW 28B.16.180 and 1973 1st ex.s. c 46 s 3 & 1969 ex.s. c 36 s 17;
- (26) RCW 28B.16.190 and 1969 ex.s. c 36 s 19;
- (27) RCW 28B.16.200 and 1979 c 151 s 18 & 1969 ex.s. c 36 s 20;

- (28) RCW 28B.16.210 and 1969 ex.s. c 36 s 29;
- (29) RCW 28B.16.220 and 1969 ex.s. c 36 s 31;
- (30) RCW 28B.16.230 and 1973 c 62 s 6 & 1969 ex.s. c 215 s 14;
- (31) RCW 28B.16.255 and 1985 c 461 s 11;
- (32) RCW 28B.16.265 and 1985 c 461 s 12;
- (33) RCW 28B.16.275 and 1985 c 461 s 13;
- (34) RCW 28B.16.300 and 1990 c 204 s 4;
- (35) RCW 28B.16.900 and 1969 ex.s. c 36 s 18;
- (36) RCW 28B.16.910 and 1969 ex.s. c 36 s 27;
- (37) RCW 28B.16.920 and 1969 ex.s. c 36 s 30; and
- (38) RCW 28B.16.930 and 1969 ex.s. c 36 s 28.

NEW SECTION. **Sec. 69.** RCW 41.06.430 and 1990 c 60 s 102 & 1980 c 118 s 7 are each repealed.

NEW SECTION. **Sec. 70.** RCW 28B.16.240 is recodified as a new section in chapter 41.06 RCW.

NEW SECTION. **Sec. 71.** RCW 41.06.230, 41.06.240, 41.06.310, and 41.64.900 are each decodified.

NEW SECTION. **Sec. 72.** (1) The legislature recognizes that the most vital asset of state government is the people who design, manage, and implement its programs and deliver its services. The quality and effectiveness of state service depends on many factors, including adequate resources, personal dedication, proper training, skilled and sensitive management, and the removal of artificial barriers to personal and organizational success.

(2) The legislature further recognizes that due to increasing demands on state government requiring new levels of efficiency and effectiveness in service delivery, and the impact of the total system of laws and rules governing recruitment, development, and management of personnel resources in state government, it is imperative to immediately and comprehensively examine all aspects of that system, and make whatever changes are indicated forthwith.

(3) To that end, there is hereby created a study task force composed of the following members: Three members of the house of representatives appointed by the speaker of the house of representatives, three members of the senate appointed by the president of the senate, five members appointed by the governor, and one representative from each employee organization that has at least five hundred dues-paying members employed by the state of Washington. The charge of the task force is to make a comprehensive recommendation to the legislature no later than December 1, 1993, in the form of proposed legislation, regarding the provision of personnel resources in state government. The task force shall address at least the following issues:

(a) Overall organization of the personnel resources apparatus in state government:

(i) Consolidation or decentralization of all personnel services; and  
(ii) The appropriate role and degree of control of the governor, the Washington personnel resources board, agency directors, and other elected officials;

(b) Efficiency in management and service delivery:

(i) Identify the principal barriers to, and successes in, effective recruitment, retention, development, and assignment of a quality work force in state service;

(ii) Analyze the extent to which improvement in these areas is best achieved by changes in civil service reform, or from management and organizational initiatives of the governor, agency directors, employee organizations, employees, and other elected officials; and

(iii) Develop principles regarding the purchase of services by state government;

(c) Employee rights and participation:

(i) Identify areas and issues that are appropriately decided cooperatively between classified employees and management through collective bargaining or otherwise, and those areas that are inherently management prerogatives and responsibilities;

(ii) Analyze the full range of collective bargaining or other collaborative process issues, and identify those features that are the most effective and equitable, including grievance procedures, bargaining units, representation, union security, negotiations, and unfair labor practices;

(iii) Analyze the duty of the state to provide job stability and termination rights such as notice for exempt employees and develop a policy of equitable protection for exempt employees; and

(d) Any other related issue that comes to light during the course of the study may properly be examined. This list of issues is in no way intended to limit the inquiry and exploration of the task force in its pursuit of its principal charge.

(4) In developing its recommendation the task force shall draw upon the following resources:

(a) Full and frequent consultation with particular interest groups, including state employees and their organizations, managers, and directors at all levels of state service, elected officials, and academic and private sector personnel resource specialists;

(b) The experience of other states, particularly those who have recently made significant changes in this area; and

(c) The experience of private sector organizations that are recognized for innovative and effective accomplishment in this field.

(5) The task force shall meet at least monthly, and shall hold meetings in different regions of the state. Staff services shall be provided by legislative and governor's office staff.

(6) This section shall expire December 31, 1993.

**NEW SECTION. Sec. 73.** Section 67 of this act shall take effect July 1, 1997.

**NEW SECTION. Sec. 74.** Sections 1 through 66 and 68 through 71 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 22, 1993.

Passed the Senate April 21, 1993.

Approved by the Governor May 10, 1993.

Filed in Office of Secretary of State May 10, 1993.

**CHAPTER 282**

[Engrossed Senate Bill 5260]

**SALMON FOR HUMAN CONSUMPTION—LABELING REQUIREMENTS**

**Effective Date: 7/25/93**

AN ACT Relating to salmon labeling for human consumption; adding new sections to chapter 69.04 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers.

**NEW SECTION. Sec. 2.** A new section is added to chapter 69.04 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 3 through 5 of this act.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

SCIENTIFIC NAME	COMMON NAME
<i>Oncorhynchus tshawytscha</i>	Chinook salmon or king salmon
<i>Oncorhynchus kisutch</i>	Coho salmon or silver salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon
<i>Salmo salar</i> (in other than its landlocked form)	Atlantic salmon

(2) "Commercially caught" means salmon harvested by commercial fishers.

**NEW SECTION. Sec. 3.** A new section is added to chapter 69.04 RCW to read as follows:

With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen salmon food fish or cultured aquatic salmon without identifying the species of salmon by its common name to the buyer at the point of sale such that the buyer can make an informed decision in purchasing. A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded.

NEW SECTION. Sec. 4. A new section is added to chapter 69.04 RCW to read as follows:

With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 75 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded.

NEW SECTION. Sec. 5. A new section is added to chapter 69.04 RCW to read as follows:

To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fisheries, shall adopt rules:

(1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of identifying and selling salmon;

(2) Enforcing sections 3 and 4 of this act.

Passed the Senate April 20, 1993.

Passed the House April 6, 1993.

Approved by the Governor May 11, 1993.

Filed in Office of Secretary of State May 11, 1993.

## CHAPTER 283

[Substitute Senate Bill 5056]

## SEAWEED HARVEST LIMITS AND MANAGEMENT PLAN DEVELOPMENT

Effective Date: 7/25/93

AN ACT Relating to seaweed; amending RCW 75.10.010; adding new sections to chapter 79.01 RCW; creating new sections; and prescribing penalties.

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

**NEW SECTION.** Sec. 1. The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection.

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta.

**NEW SECTION.** Sec. 3. The maximum daily wet weight harvest or possession of seaweed for personal use from all private and public tidelands and state bedlands is ten pounds per person. The department of natural resources in cooperation with the department of fisheries may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

**NEW SECTION.** Sec. 4. A violation of section 3 of this act is an infraction under chapter 7.84 RCW, punishable by a penalty of one hundred dollars.

**NEW SECTION.** Sec. 5. The department of fisheries may enforce the provisions of sections 3 and 4 of this act.

**NEW SECTION.** Sec. 6. Section 3 of this act does not apply to commercial harvest of marine aquatic plants.

Sec. 7. RCW 75.10.010 and 1985 c 155 s 1 are each amended to read as follows:

(1) Fisheries patrol officers and ex officio fisheries patrol officers within their respective jurisdictions, shall enforce this title, rules of the director, and other statutes as prescribed by the legislature.

(2) When acting within the scope of subsection (1) of this section and when an offense occurs in the presence of the fisheries patrol officer who is not an ex officio fisheries patrol officer, the fisheries patrol officer may enforce all criminal laws of the state. The fisheries patrol officer must have successfully completed

the basic law enforcement academy course sponsored by the criminal justice training commission, or a supplemental course in criminal law enforcement as approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(3) Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by a fisheries patrol officer rests with the department of fisheries unless the fisheries patrol officer acts under the direction and control of another agency or unless the liability is otherwise assumed under a written agreement between the department of fisheries and another agency.

(4) Fisheries patrol officers may serve and execute warrants and processes issued by the courts.

(5) Fisheries patrol officers may enforce the provisions of sections 3 and 4 of this act.

NEW SECTION. **Sec. 8.** By December 31, 1993, the department of natural resources in cooperation with the department of fisheries shall develop and report to the appropriate committees of the legislature on a process and budget necessary to accomplish the following:

(1) Inventory and monitor the seaweed resource for seaweed species that are or have the potential to be harvested for recreational or tribal ceremonial and subsistence purposes;

(2) Develop a management plan that will address the appropriate level of recreational harvest of seaweed while conserving the seaweed resource;

(3) Identify the respective state and tribal roles in managing the seaweed resource; and

(4) Involve interested parties in development of the inventory and management plan, including the state parks and recreation commission, affected counties, private tideland owners, the tribes, and representatives of those who harvest seaweed for personal use. The department of natural resources shall also involve these interested parties in development of the process and budget.

NEW SECTION. **Sec. 9.** Sections 2 through 6 of this act are each added to chapter 79.01 RCW.

Passed the Senate April 19, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 11, 1993.

Filed in Office of Secretary of State May 11, 1993.



**CHAPTER 284**

[Substitute Senate Bill 5751]

**RURAL PARTIAL—COUNTY LIBRARY DISTRICTS****Effective Date: 7/25/93**

AN ACT Relating to rural partial-county library districts; amending RCW 27.12.010, 27.12.070, and 84.52.052; and adding a new section to chapter 27.12 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 27.12 RCW to read as follows:

A rural partial-county library district may be created in a portion of the unincorporated area of a county as provided in this section if a rural county library district, intercounty rural library district, or island library district has not been created in the county and the area proposed to be included in a rural partial-county library district has an assessed valuation of at least fifty million dollars.

The procedure to create a rural partial-county library district is initiated by the filing of petitions with the county auditor proposing the creation of the district that have been signed by at least ten percent of the registered voters residing in the area proposed to be included in the rural partial-county library district. The county auditor shall review the petitions and certify the sufficiency or insufficiency of the signatures to the county legislative authority.

If the petitions are certified as having sufficient valid signatures, the county legislative authority shall hold a public hearing on the proposed rural partial-county library district, may adjust the boundaries of the proposed district, and may cause a ballot proposition to be submitted to the voters of the proposed rural partial-county library district authorizing its creation if the county legislative authority finds that the creation of the rural partial-county library district is in the public interest. A subsequent public hearing shall be held if additional territory is added to the proposed rural partial-county library district by action of the county legislative authority.

The rural partial-county library district shall be created if the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters voting on the proposition. Immediately after creation of the rural partial-county library district the county legislative authority shall appoint a board of library trustees for the district as provided under RCW 27.12.190.

Except as provided in this section, a rural partial-county library district is subject to all the provisions of law applicable to a rural county library district and shall have all the powers, duties, and authorities of a rural county library district, including, but not limited to, the authority to impose property taxes, incur debt, and annex a city or town with a population of less than one hundred thousand at the time of the annexation that is located in the same county as the rural partial-county library district.

Adjacent unincorporated territory in the county may be annexed to a rural partial-county library district in the same manner as territory is annexed to a

sewer district, except that an annexation is not subject to potential review by a boundary review board.

If a ballot proposition is approved creating a rural county library district in the county, every rural partial-county library district in that county shall be dissolved and its assets and liabilities transferred to the rural county library district. Where a rural partial-county library district has annexed a city or town, the voters of the city or town shall be allowed to vote on the proposed creation of a rural county library district and, if created, the rural county library district shall include each city and town that was annexed to the rural partial-county library district.

Nothing in this section authorizes the consolidation of a rural partial-county library district with any rural county library district; island library district; city, county, or regional library; intercounty library district; or other rural partial-county library district, unless, in addition to any other requirements imposed by statute, the boards of all library districts involved approve the consolidation.

**Sec. 2.** RCW 27.12.010 and 1982 c 123 s 1 are each amended to read as follows:

As used in this chapter (~~and chapter 27.08 RCW~~), unless the context requires a different meaning:

(1) "Governmental unit" means any county, city, town, rural county library district, intercounty rural library district, rural partial-county library district, or island library district;

(2) "Legislative body" means the body authorized to determine the amount of taxes to be levied in a governmental unit; in rural county library districts, in intercounty rural library districts, and in island library districts, the legislative body shall be the board of library trustees of the district;

(3) "Library" means a free public library supported in whole or in part with money derived from taxation; (~~and~~)

(4) "Regional library" means a free public library maintained by two or more counties or other governmental units as provided in RCW 27.12.080; (~~and~~)

(5) "Rural county library district" means a library serving all the area of a county not included within the area of incorporated cities and towns: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390; (~~and~~)

(6) "Intercounty rural library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns within two or more counties: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390; (~~and~~)

(7) "Island library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns on a single island only, and not all of the area of the county, in counties composed

entirely of islands and having a population of less than twenty-five thousand at the time the island library district was created: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390; and

(8) "Rural partial-county library district" means a municipal corporation organized to provide library service for a portion of the unincorporated area of a county that has an assessed valuation of at least fifty million dollars. Any city or town located in the same county as a rural partial-county library district may annex to the district if the city or town has a population of one hundred thousand or less at the time of annexation.

**Sec. 3.** RCW 27.12.070 and 1984 c 186 s 7 are each amended to read as follows:

The county treasurer of the county in which any rural county library district or rural partial-county library district is created shall receive and disburse all district revenues and collect all taxes levied under this chapter.

**Sec. 4.** RCW 84.52.052 and 1991 c 138 s 1 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, rural partial-county library district, intercounty rural library district, fire protection district, cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, or cultural arts, stadium, and convention district.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or RCW 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 64 and as thereafter amended, at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as

to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

Passed the Senate April 18, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 11, 1993.

Filed in Office of Secretary of State May 11, 1993.

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## CHAPTER 285

[Engrossed House Bill 1033]

### STATE-WIDE JAIL INDUSTRIES PROGRAM

Effective Date: 7/25/93

AN ACT Relating to city and county jail industries; and adding a new chapter to Title 36 RCW.

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

**NEW SECTION.** Sec. 1. Cities and counties have a significant interest in ensuring that inmates in their jails are productive citizens after their release in the community. The legislature finds that there is an expressed need for cities and counties to uniformly develop and coordinate jail industries technical information and program and public safety standards state-wide. It further finds that meaningful jail work industries programs that are linked to formal education and adult literacy training can significantly reduce recidivism, the rising costs of corrections, and criminal activities. It is the purpose and intent of the legislature, through this chapter, to establish a state-wide jail industries program designed to promote inmate rehabilitation through meaningful work experience and reduce the costs of incarceration. The legislature recognizes that inmates should have the responsibility for contributing to the cost of their crime through the wages earned while working in jail industries programs and that such income shall be used to offset the costs of implementing and maintaining local jail industries programs and the costs of incarceration.

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Board" means the state-wide jail industries board of directors.
- (2) "City" means any city, town, or code city.
- (3) "Cost accounting center" means a specific industry program operated under the private sector prison industry enhancement certification program as specified in 18 U.S.C. Sec. 1761.
- (4) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior, district, or municipal court of the state of Washington for payment of restitution to a victim, a statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court appointed

attorneys' fees and costs of defense, fines, and other legal financial obligations that are assessed as a result of a felony or misdemeanor conviction.

(5) "Free venture industries" means types of industries which produce products, goods, or services through two modalities: (a) Employer model: An agreement between city or county and a private sector business or industry or nonprofit organization to produce goods or services to both public and private sectors; (b) customer model: An industry operated and managed to provide Washington state manufacturers or businesses with products or services currently produced, provided, and assembled by out-of-state or foreign suppliers.

(6) "Jail inmate" means a preconviction or postconviction resident of a city or county jail who is determined to be eligible to participate in jail inmate work programs according to the eligibility criteria of the work program.

(7) "Private sector prison industry enhancement certification program" means that program authorized by the United States justice assistance act of 1984, 18 U.S.C. Sec. 1761.

NEW SECTION. Sec. 3. A state-wide jail industries board of directors is established. The board shall consist of the following members:

(1) One sheriff and one police chief, to be selected by the Washington association of sheriffs and police chiefs;

(2) One county commissioner or one county councilmember to be selected by the Washington state association of counties;

(3) One city official to be selected by the association of Washington cities;

(4) Two jail administrators to be selected by the Washington state jail association, one of whom shall be from a county or a city with an established jail industries program;

(5) One prosecuting attorney to be selected by the Washington association of prosecuting attorneys;

(6) One administrator from a city or county corrections department to be selected by the Washington correctional association;

(7) One county clerk to be selected by the Washington association of county clerks;

(8) Three representatives from labor to be selected by the governor. The representatives may be chosen from a list of nominations provided by state-wide labor organizations representing a cross-section of trade organizations;

(9) Three representatives from business to be selected by the governor. The representatives may be chosen from a list of nominations provided by state-wide business organizations representing a cross-section of businesses, industries, and all sizes of employers;

(10) The governor's representative from the employment security department;

(11) One member representing crime victims, to be selected by the governor;

(12) One member representing on-line law enforcement officers, to be selected by the governor;

(13) One member from the department of trade and economic development to be selected by the governor;

(14) One member representing higher education, vocational education, or adult basic education to be selected by the governor; and

(15) The governor's representative from the correctional industries division of the state department of corrections shall be an ex officio member for the purpose of coordination and cooperation between prison and jail industries and to further a positive relationship between state and local government offender programs.

**NEW SECTION.** Sec. 4. The board shall, at the request of a city or county, offer advice in developing, promoting, and implementing consistent, safe, and efficient offender work programs.

The board may also develop guidelines and provide technical assistance for the coordination of jail industries programs with basic educational programs.

**NEW SECTION.** Sec. 5. The board shall require a city or a county that establishes a jail industries program to develop a local advisory group, or to use an existing advisory group of the appropriate composition, to advise and guide jail industries program operations. Such an advisory group shall include an equal number of representatives from labor and business. Representation from a sheltered workshop, as defined in RCW 82.04.385, and a crime victim advocacy group, if existing in the local area, should also be included.

A local advisory group shall have among its tasks the responsibility of ensuring that a jail industry has minimal negative impact on existing private industries or the labor force in the locale where the industry operates and that a jail industry does not negatively affect employment opportunities for people with developmental disabilities contracted through the operation of sheltered workshops as defined in RCW 82.04.385. In the event a conflict arises between the local business community or labor organizations concerning new jail industries programs, products, services, or wages, the city or county must use the arbitration process established pursuant to section 6 of this act.

**NEW SECTION.** Sec. 6. The board, in accordance with chapter 34.05 RCW, shall:

(1) Establish an arbitration process for resolving conflicts arising among the local business community and labor organizations concerning new industries programs, products, services, or wages;

(2) Encourage the development of the collection and analysis of jail industries program data, including long-term tracking information on offender recidivism;

(3) Determine, by applying established federal guidelines and criteria, whether a city or a county jail free venture industries program complies with the private sector prison industry enhancement certification program. In so doing, also determine if that industry should be designated as a cost accounting center for the purposes of the federal certification program; and

(4) Provide technical assistance with product marketing.

**NEW SECTION.** Sec. 7. The board may receive funds from local, county, state, or federal sources and may receive grants to support its activities. The board may establish a reasonable schedule of suggested fees that will support state-wide efforts to promote and facilitate jail industries that would be presented to cities and counties that have established jail industries programs.

**NEW SECTION.** Sec. 8. The board shall initially convene at the call of the representative of the correctional industries division of the state department of corrections, together with the jail administrator selected from a city or a county with an established jail industries program, no later than six months after the effective date of this act. Subsequent meetings of the board shall be at the call of the board chairperson. The board shall meet at least twice a year.

The board shall elect a chairperson and other such officers as it deems appropriate. However, the chairperson may not be the representative of the correctional industries division of the state department of corrections nor any representative from a state executive branch agency.

Members of the board shall serve terms of three years each on a staggered schedule to be established by the first board. For purposes of initiating a staggered schedule of terms, some members of the first board may initially serve two years and some members may initially serve four years.

The members of the board shall serve without compensation but may be reimbursed for travel expenses from funds acquired under this chapter.

**NEW SECTION.** Sec. 9. A city or a county that implements a jail industries program may establish a separate fund for the operation of the program. This fund shall be a special revenue fund with continuing authority to receive income and pay expenses associated with the jail industries program.

**NEW SECTION.** Sec. 10. Cities and counties participating in jail industries are authorized to provide for comprehensive work programs using jail inmate workers at worksites within jail facilities or at such places within the city or county as may be directed by the legislative authority of the city or county, as similarly provided under RCW 36.28.100.

**NEW SECTION.** Sec. 11. When an offender is employed in a jail industries program for which pay is allowed, deductions may be made from these earnings for court-ordered legal financial obligations as directed by the court in reasonable amounts that do not unduly discourage the incentive to work. These deductions shall be disbursed as directed in RCW 9.94A.145.

In addition, inmates working in jail industries programs shall contribute toward costs to develop, implement, and operate jail industries programs. This amount shall be a reasonable amount that does not unduly discourage the incentive to work. The amount so deducted shall be deposited in the jail industries special revenue fund.

Upon request of the offender, family support may also be deducted and disbursed to a designated family member.

**NEW SECTION. Sec. 12.** A jail inmate who works in a free venture industry shall be considered an employee of that industry only for the purpose of the Washington industrial safety and health act, chapter 49.17 RCW, as long as the public safety is not compromised, and for eligibility for industrial insurance benefits under Title 51 RCW. However, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary total disability or permanent total disability under RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any jail inmate who is employed in a nonfree venture industry.

**NEW SECTION. Sec. 13.** In the event of failure or discontinuance of a free venture industry agreement, responsibility for obligations under Title 51 RCW shall be borne by the city or county responsible for establishment of such free venture industry, as if the city or county had been the employing agency.

**NEW SECTION. Sec. 14.** To the extent possible, jail industries programs shall be augmented by education and training to improve worker literacy and employability skills. Such education and training may include, but is not limited to, basic adult education, work towards a certificate of educational competence following successful completion of the general educational development test, vocational and preemployment work maturity skills training, and apprenticeship classes.

**NEW SECTION. Sec. 15.** Until sufficient funding is secured by the board to adequately provide staffing, basic staff assistance shall be provided, to the extent possible, by the department of corrections.

**NEW SECTION. Sec. 16.** Sections 1 through 15 of this act shall constitute a new chapter in Title 36 RCW.

**NEW SECTION. Sec. 17.** 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 19, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.



## CHAPTER 286

[Substitute House Bill 1047]

## OUT-OF-STATE SOLID WASTE IMPORTATION—REGULATION AND FEES

Effective Date: 5/12/93

AN ACT Relating to solid waste received from outside the state; adding new sections to chapter 70.95 RCW; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 70.95 RCW to read as follows:

The legislature finds that:

(1) The state of Washington has responded to the increasing challenges of safe, affordable disposal of solid waste by an ambitious program of waste reduction, recycling and reuse, as well as strict standards to ensure the safe handling, transportation, and disposal of solid waste;

(2) All communities in Washington participate in these programs through locally available recycling services, increased source separation and material recovery requirements, programs for waste reduction and product reuse, and performance standards that apply to all solid waste disposal facilities in the state;

(3) New requirements for the siting and performance of disposal facilities have greatly decreased the number of such facilities in Washington, and the state has a significant interest in ensuring adequate disposal capacity within the state;

(4) The landfilling, incineration, and other disposal of solid waste may adversely impact public health and environmental quality, and the state has a significant interest in decreasing volumes of the waste stream destined for disposal;

(5) Because of the decreasing number of disposal facilities and other reasons, solid waste is being transported greater distances, often beyond the community where generated and is increasingly being transported between states;

(6) Washington's waste management priorities and programs are a balanced approach of increased reuse, recycling and waste reduction, the strengthening of markets for recycled content products, and the safe disposal of the remaining waste stream, with the costs of these programs shared equitably by all persons generating waste in the state;

(7) Those residing in other states who generate waste destined for disposal within Washington should also share the costs of waste diversion and management of Washington's disposal facilities, so that the risks of waste disposal and the costs of mitigating those risks are shared equitably by all waste generators, regardless of their location;

(8) Because Washington state may not directly regulate waste handling, reduction, and recycling activities beyond its state boundaries, the only reasonable alternative to ensure this equitable treatment of waste being disposed within Washington is to implement a program of reviewing such activities as to waste originating outside of Washington, and to assign the additional costs, when necessary, to ensure that the waste meets standards substantially equivalent to

those applicable to waste generated within the state, and, in some cases, to prohibit disposal of waste where its generation and management is not subject to standards substantially equivalent to those applicable to waste generated within the state.

**NEW SECTION.** Sec. 2. A new section is added to chapter 70.95 RCW to read as follows:

(1) At least sixty days prior to receiving solid waste generated from outside of the state, the operator of a solid waste disposal site facility shall report to the department the types and quantities of waste to be received from an out-of-state source. The department shall develop guidelines for reporting this information. The guidelines shall provide for less than sixty days notice for shipments of waste made on a short-term or emergency basis. The requirements of this subsection shall take effect upon completion of the guidelines.

(2) Upon notice under subsection (1) of this section, the department shall identify all activities and costs necessary to ensure that solid waste generated out-of-state meets standards relating to solid waste reduction, recycling, and management substantially equivalent to those required of solid waste generated within the state. The department may assess a fee on the out-of-state waste sufficient to recover the actual costs incurred in ensuring that the out-of-state waste meets equivalent state standards. The department may delegate, to a local health department, authority to implement the activities identified by the department under this subsection. All money received from fees imposed under this subsection shall be deposited into the solid waste management account created by RCW 70.95.800, and shall be used solely for the activities required by this section.

(3) The department may prohibit in-state disposal of solid waste generated from outside of the state, unless the generators of the waste meet: (a) Waste reduction and recycling requirements substantially equivalent to those applicable in Washington state; and (b) solid waste handling standards substantially equivalent to those applicable in Washington state.

(4) The department may adopt rules to implement this section.

**NEW SECTION.** Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 287

[House Bill 1068]

## TRANSFER ON DEATH SECURITY REGISTRATION ACT

Effective Date: 7/25/93

AN ACT Relating to registration of transfer on death securities; and adding a new chapter to Title 21 RCW.

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) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or (b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

**NEW SECTION.** Sec. 2. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form shall hold the security as joint tenants with right of survivorship either as separate property or as community property, and not as tenants in common.

**NEW SECTION.** Sec. 3. A registering entity may register a security in beneficiary form if the form is authorized by this chapter or a substantially identical statute of another state if the state is: (1) The state of organization of the issuer or registering entity, (2) the location of the registering entity's principal office, (3) the location of the office of its transfer agent or its office making the registration, or (4) the location of the owner's listed address at the time of registration. A registration governed by the law of a jurisdiction in which this or substantially identical legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

**NEW SECTION.** Sec. 4. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of a sole owner or at the death of the last to die of multiple owners.

**NEW SECTION.** Sec. 5. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner or owners and before the name of a beneficiary.

**NEW SECTION.** Sec. 6. The designation of a TOD or POD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death, or on community property rights and obligations of owners. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary.

**NEW SECTION.** Sec. 7. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If

no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

**NEW SECTION.** **Sec. 8.** (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this chapter.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with section 7 of this act and does so in good faith reliance (a) on the registration, (b) on this chapter, and (c) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(4) The protection provided by this chapter to a registering entity does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

**NEW SECTION.** **Sec. 9.** (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(2) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

**NEW SECTION.** **Sec. 10.** (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (a) for registrations in beneficiary form, and (b) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating beneficiaries. Other rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.

(b) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.

(c) Multiple owners-multiple beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. Peter Q. Brown.

NEW SECTION. Sec. 11. (1) This chapter shall be known as and may be cited as the uniform TOD security registration act.

(2) This chapter shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this chapter among states enacting it.

(3) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter.

NEW SECTION. Sec. 12. This chapter applies to registrations of securities in beneficiary form made before or after the effective date of this act, by decedents dying on or after the effective date of this act.

NEW SECTION. Sec. 13. Sections 1 through 12 of this act shall constitute a new chapter in Title 21 RCW.

Passed the House April 19, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 288**

[Substitute House Bill 1069]

**SEIZURE AND FORFEITURE OF PROPERTY INVOLVED IN A FELONY**

**Effective Date: 7/25/93**

AN ACT Relating to seizure of property; adding new sections to chapter 7.68 RCW; and adding a new chapter to Title 10 RCW.

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

NEW SECTION. Sec. 1. This chapter does not apply to property subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.230, 9A.82.100, 9A.83.030, 7.48.090, or 77.12.101.

NEW SECTION. Sec. 2. (1) The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or

was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the felony.

(2) Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

(3) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The

hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(7) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.

(a) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent



qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(c) Retained property and net proceeds not required to be paid to the state treasurer, or otherwise required to be spent under this section, shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

**NEW SECTION.** Sec. 3. The legislature finds compelling state interests in compensating the victims of crime and in preventing criminals from profiting from their crimes. Sections 4 through 7 of this act are intended to advance both of these interests.

**NEW SECTION.** Sec. 4. The following are subject to seizure and forfeiture and no property right exists in them:

(1) All tangible or intangible property, including any right or interest in such property, acquired by a person convicted of a crime for which there is a victim of the crime and to the extent the acquisition is the direct or indirect result of the convicted person having committed the crime. Such property includes but is not limited to the convicted person's remuneration for, or contract interest in, any reenactment or depiction or account of the crime in a movie, book, magazine, newspaper or other publication, audio recording, radio or television presentation, live entertainment of any kind, or any expression of the convicted person's thoughts, feelings, opinions, or emotions regarding the crime.

(2) Any property acquired through the traceable proceeds of property described in subsection (1) of this section.

**NEW SECTION.** Sec. 5. (1) Any property subject to seizure and forfeiture under section 4 of this act may be seized by the prosecuting attorney of the county in which the convicted person was convicted upon process issued by any superior court having jurisdiction over the property.

(2) Proceedings for forfeiture are commenced by a seizure. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later, except that such real property seized may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest.

(3) The prosecuting attorney who seized the property shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a

party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the seizing prosecuting attorney in writing of the person's claim of ownership or right to possession of the property within forty-five days for personal property or ninety days for real property, the property seized shall be deemed forfeited.

(5) If any person notifies the seizing prosecuting attorney in writing of the person's claim of ownership or right to possession of the property within forty-five days for personal property or ninety days for real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The prosecuting attorney shall file the case into a court of competent jurisdiction. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. In cases involving personal property, the burden of producing evidence shall be by a preponderance and upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving real property, the burden of producing evidence shall be by a preponderance and upon the prosecuting attorney. The seizing prosecuting attorney shall promptly return the property to the claimant upon a determination by the prosecuting attorney or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(6) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the county auditor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules.

(7) A forfeiture action under this section may be brought at any time from the date of conviction until the expiration of the statutory maximum period of incarceration that could have been imposed for the crime involved.

(8) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party did not know that the property was subject to seizure and forfeiture.

**NEW SECTION.** Sec. 6. (1) The proceeds of any forfeiture action brought under section 5 of this act shall be distributed as follows:

(a) First, to the victim or to the plaintiff in a wrongful death action brought as a result of the victim's death, to satisfy any money judgment against the convicted person, or to satisfy any restitution ordered as part of the convicted person's sentence;

(b) Second, to the reasonable legal expenses of bringing the action;

(c) Third, to the crime victims' compensation fund under RCW 7.68.090.

(2) A court may establish such escrow accounts or other arrangements as it deems necessary and appropriate in order to distribute proceeds in accordance with this section.

**NEW SECTION.** Sec. 7. (1) Any action taken by or on behalf of a convicted person including but not limited to executing a power of attorney or creating a corporation for the purpose of defeating the provisions of sections 3 through 6 of this act is null and void as against the public policy of this state.

(2) Sections 3 through 6 of this act are supplemental and do not limit rights or remedies otherwise available to the victims of crimes and do not limit actions otherwise available against persons convicted of crimes.

**NEW SECTION.** Sec. 8. (1) Sections 1 and 2 of this act shall constitute a new chapter in Title 10 RCW.

(2) Sections 3 through 7 of this act are each added to chapter 7.68 RCW.

Passed the House April 24, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 289

[Substitute House Bill 1072]

### GUARDIANS AD LITEM—APPOINTMENT AND RESPONSIBILITIES IN FAMILY COURT

**Effective Date:** 7/25/93

AN ACT Relating to guardians ad litem; and amending RCW 26.09.220, 26.10.130, 26.12.060, and 26.12.175.

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

**Sec. 1.** RCW 26.09.220 and 1989 c 375 s 12 are each amended to read as follows:

(1) The court may order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(2) In preparing (~~(his)~~) the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if (~~(he)~~) the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The (~~(court)~~) investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom (~~(he)~~) the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

**Sec. 2.** RCW 26.10.130 and 1987 c 460 s 41 are each amended to read as follows:

(1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodian arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(2) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The (~~(court)~~) investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The

investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom ~~((he))~~ the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

**Sec. 3.** RCW 26.12.060 and 1991 c 367 s 12 are each amended to read as follows:

The court commissioners shall: (1) Make appropriate referrals to county family court services program if the county has a family court services program or appoint a guardian ad litem pursuant to RCW 26.12.175; (2) order investigation and reporting of the facts upon which to base warrants, subpoenas, orders or directions in actions or proceedings under this chapter; (3) exercise all the powers and perform all the duties of court commissioners; (4) make written reports of all proceedings had which shall become a part of the record of the family court; (5) provide supervision over the exercise of its jurisdiction as the judge of the family court may order; (6) cause the orders and findings of the family court to be entered in the same manner as orders and findings are entered in cases in the superior court; (7) cause other reports to be made and records kept as will indicate the value and extent of reconciliation, mediation, investigation, and treatment services; and (8) conduct hearings under chapter 13.34 RCW as provided in RCW 13.04.021.

**Sec. 4.** RCW 26.12.175 and 1991 c 367 s 17 are each amended to read as follows:

(1) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is ~~((it))~~ necessary to protect the best interests of the child in any proceeding under this chapter. The family court services professionals ~~((shall))~~ may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county. Unless otherwise ordered, the guardian ad litem's role is to investigate and report to the court concerning parenting arrangements for the child, and to represent the child's best interests. The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem

assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) Training related to the guardian's duties;
- (c) Number of years' experience as a guardian ad litem;
- (d) Number of appointments as a guardian ad litem; and
- (e) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Passed the House April 20, 1993.  
 Passed the Senate April 16, 1993.  
 Approved by the Governor May 12, 1993.  
 Filed in Office of Secretary of State May 12, 1993.

**CHAPTER 290**

[House Bill 1074]

**CORPORATIONS—REVISIONS TO CORPORATIONS LAWS**

**Effective Date: 7/25/93**

AN ACT Relating to corporations; amending RCW 18.100.120, 50.04.165, 23B.14.300, and 23B.16.220; and adding a new section to chapter 23B.07 RCW.

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

**Sec. 1.** RCW 18.100.120 and 1982 c 35 s 169 are each amended to read as follows:

Corporations organized pursuant to this chapter shall render professional service and exercise its authorized powers under a name permitted by law and the professional ethics of the profession in which the corporation is so engaged. ~~((In the event that the words "company", "corporation" or "incorporated" or any other word, abbreviation, affix or prefix indicating that it is a corporation shall be used, it shall be accompanied with the abbreviation "P.S." or "P.C." or the words "professional service"-))~~ The corporate name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The corporate name may also contain either the words "corporation," "incorporated," "company," or "limited,"

or the abbreviation "corp.," "inc.," "co.," or "ltd." With the filing of its first annual report and any filings thereafter, professional service corporation shall list its then shareholders: PROVIDED, That notwithstanding the foregoing provisions of this section, the corporate name of a corporation organized to render dental services shall contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C."

**Sec. 2.** RCW 50.04.165 and 1991 c 72 s 57 are each amended to read as follows:

~~((1))~~ Services performed by ~~((corporate officers as defined in subsection (2) of this section, [other than those]))~~ a person appointed as an officer of a corporation under RCW 23B.08.400, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section.

~~((2) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer.))~~

**Sec. 3.** RCW 23B.14.300 and 1989 c 165 s 163 are each amended to read as follows:

The superior courts may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

- (a) The corporation obtained its articles of incorporation through fraud; or
- (b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; ~~((or))~~

(d) The corporate assets are being misapplied or wasted; or

(e) The corporation has ceased all business activity and has failed, within a reasonable time, to dissolve, to liquidate its assets, or to distribute its remaining assets among its shareholders;

(?) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment was returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

**NEW SECTION. Sec. 4.** A new section is added to chapter 23B.07 RCW to read as follows:

(1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this title in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RCW 23B.06.400;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation;

(g) Resolves any issue about which there exists a deadlock among directors or shareholders;

(h) Requires dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event or contingency; or

(i) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(2) An agreement authorized by this section shall be:

(a) Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for ten years, unless the agreement provides otherwise.



(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by RCW 23B.06.260(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Sec. 5. RCW 23B.16.220 and 1991 c 72 s 41 are each amended to read as follows:

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing initial and annual reports that set forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(d) The address of the principal place of business of the corporation in this state;

(e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010, in an agreement authorized under section 4 of this act, or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;

(f) A brief description of the nature of its business; and

(g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.

(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the corporation.

(3) A corporation's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 291**

[House Bill 1078]

**NONPROBATE TRANSFER AT DEATH PROVISIONS**

**Effective Date: 7/25/93**

AN ACT Relating to nontestamentary characterization of interests passing at death; reenacting and amending RCW 11.62.010; adding new sections to chapter 11.02 RCW; and repealing RCW 11.02.090.

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

**Sec. 1.** RCW 11.62.010 and 1988 c 64 s 25 and 1988 c 29 s 2 are each reenacted and amended to read as follows:

(1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as

a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed ~~((the amount specified in RCW 6.13.030))~~ sixty thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

**NEW SECTION. Sec. 2.** (1) An otherwise effective written instrument of transfer may not be deemed testamentary solely because of a provision for a nonprobate transfer at death in the instrument.

(2) "Provision for a nonprobate transfer at death" as used in subsection (1) of this section includes, but is not limited to, a written provision that:

(a) Money or another benefit up to that time due to, controlled, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or a separate writing, including a will, executed at any time;

(b) Money or another benefit due or to become due under the instrument ceases to be payable in the event of the death of the promisee or the promisor before payment or demand; or

(c) Property, controlled by or owned by the decedent before death, that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed at any time.

(3) "Otherwise effective written instrument of transfer" as used in subsection (1) of this section means: An insurance policy; a contract of employment; a bond; a mortgage; a promissory note; a certified or uncertified security; an account agreement; a compensation plan; a pension plan; an individual retirement plan; an employee benefit plan; a joint tenancy; a community property agreement; a trust; a conveyance; a deed of gift; a contract; or another written instrument of a similar nature that would be effective if it did not contain provision for a nonprobate transfer at death.

(4) This section only eliminates a requirement that instruments of transfer comply with formalities for executing wills under chapter 11.12 RCW. This section does not make a written instrument effective as a contract, gift, conveyance, deed, or trust that would not otherwise be effective as such for reasons other than failure to comply with chapter 11.12 RCW.

(5) This section does not limit the rights of a creditor under other laws of this state.

**NEW SECTION. Sec. 3.** A provision in a lease of a safety deposit repository to the effect that two or more persons have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of the repository and devolution of title to those contents is determined according to rules of law without regard to the lease provisions.

**NEW SECTION. Sec. 4.** RCW 11.02.090 and 1974 ex.s. c 117 s 54 are each repealed.

**NEW SECTION. Sec. 5.** Sections 2 and 3 of this act are each added to chapter 11.02 RCW.

Passed the House April 19, 1993.  
 Passed the Senate April 6, 1993.  
 Approved by the Governor May 12, 1993.  
 Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 292

[Engrossed Substitute House Bill 1086]

### LITTERING—RECLASSIFICATION AS CIVIL INFRACTION

Effective Date: 7/25/93

AN ACT Relating to penalties for littering; amending RCW 70.93.060, 70.93.070, and 70.95.240; and prescribing penalties.

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

**Sec. 1.** RCW 70.93.060 and 1983 c 277 s 1 are each amended to read as follows:

(1) No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

~~((1))~~ (a) When ~~((such))~~ the property is designated by the state or ~~((by any of))~~ its agencies or political subdivisions for the disposal of garbage and refuse, and ~~((such))~~ the person is authorized to use such property for ~~((such))~~ that purpose;

~~((2))~~ (b) Into a litter receptacle in ~~((such))~~ a manner that ~~((the litter))~~ will ~~((be prevented))~~ prevent litter from being carried away or deposited by the elements upon any part of said private or public property or waters.

~~((Any person violating the provisions of this section shall be guilty of a misdemeanor and the fine for such violation shall not be less than fifty dollars for each offense. In addition thereto, except where infirmity or age or other circumstance would create a hardship, such person shall be directed by the court in which conviction is obtained to pick up and remove litter from public property and/or private property, with prior permission of the legal owner, for not less than eight hours nor more than sixteen hours for each separate offense. The court shall schedule the time to be spent on such activities in such a manner that it does not interfere with the person's employment and does not interfere substantially with the person's family responsibilities))~~

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars

per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

Sec. 2. RCW 70.93.070 and 1983 c 277 s 2 are each amended to read as follows:

The director shall prescribe the procedures for the collection of ~~((fines and bail forfeitures including the imposition of additional penalty charges for late payment of fines))~~ penalties, costs, and other charges allowed by chapter 7.80 RCW for violations of this chapter. Included in the procedures shall be provisions requiring ~~((the distribution of))~~ that one-half of the monetary amount ((of fines)) actually collected ((under the enforcement)) by the state or local government entity enforcing the provisions of this chapter ((by a local governmental agency to)) be distributed to that local governmental ((agency)) entity.

Sec. 3. RCW 70.95.240 and 1969 ex.s. c 134 s 24 are each amended to read as follows:

(1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit~~((— PROVIDED, That nothing herein)).~~ This section shall not prohibit a person from dumping or depositing solid waste resulting from his own activities onto or under the surface of ground owned or leased by him when such action does not violate statutes or ordinances, or create a nuisance. ((Any person violating this section shall be guilty of a misdemeanor))

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 293

[Substitute House Bill 1118]

## EXPLOSIVES—UNLAWFUL USES

Effective Date: 7/25/93

AN ACT Relating to the unlawful use of explosives; amending RCW 70.74.010, 70.74.022, 70.74.160, 70.74.191, 70.74.270, and 70.74.295; adding new sections to chapter 70.74 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 70.74.010 and 1972 ex.s. c 88 s 5 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

(2) The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, and in which none of the ingredients are classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a No. 8 test blasting cap.

(3) The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as class A, class B, and class C explosives by the federal department of transportation(~~(= PROVIDED, That)~~). For the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives, unless possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

(4) Classification of explosives shall include but not be limited to the following:

(a) CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

(b) CLASS B EXPLOSIVES: (Possessing flammable hazard) propellant explosives, including smokeless propellants exceeding fifty pounds.

(c) CLASS C EXPLOSIVES: (Including certain types of manufactured articles which contain class A or class B explosives, or both, as components but in restricted quantities) blasting caps in quantities of 1000 or less.

(5) The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

(6) The term "magazine", shall be held to mean and include any building or other structure, other than a factory building, used for the storage of explosives.

(7) The term "improvised device" means a device which is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals and which is designed to disfigure, destroy, distract, or harass.

(8) The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

(9) The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

(10) The term "explosives manufacturing building", shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

(11) The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(12) The term "highway" shall be held to mean and include any public street, public alley, or public road.

(13) The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

(14) The term "person" shall be held to mean and include any individual, firm, copartnership, corporation, company, association, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

(15) The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

(16) The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for



transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

(17) The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

(18) The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

(19) The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

(20) The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

(21) The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

(22) The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

(23) The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

(24) The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

(25) The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

(26) The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

(27) The term (~~"pyrotechnics"~~) "pyrotechnic" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks.

(28) The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

(29) The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

(30) The term "smokeless propellants" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

(31) The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular.

Sec. 2. RCW 70.74.022 and 1988 c 198 s 10 are each amended to read as follows:

(1) It is unlawful for any person to manufacture, purchase, sell, offer for sale, use, possess, transport, or store any explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device without having a validly issued license from the department of labor and industries, which license has not been revoked or suspended. Violation of this section is a (~~gross misdemeanor~~) class C felony.

(2) Upon notice from the department of labor and industries or any law enforcement agency having jurisdiction, a person manufacturing, purchasing, selling, offering for sale, using, possessing, transporting, or storing any explosive, improvised device, or components of explosives or improvised devices without a license shall immediately surrender (~~any and all such~~) those explosives, improvised devices, or components to the department or to the respective law enforcement agency.

(3) At any time that the director of labor and industries requests the surrender of explosives, improvised devices, or components of explosives or improvised devices, from any person pursuant to subsection (2) of this section, the director may in addition request the attorney general to make application to the superior court of the county in which the unlawful practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances.

Sec. 3. RCW 70.74.160 and 1969 ex.s. c 137 s 19 are each amended to read as follows:

No person, except (~~an official as authorized herein~~) the director of labor and industries or the director's authorized agent, the owner, the owner's agent, or a person authorized to (~~do so by the owner thereof, or his agent, shall~~) enter by the owner or owner's agent, or a law enforcement officer acting within his or her official capacity, may enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW.

**NEW SECTION. Sec. 4.** Unless otherwise allowed to do so under this chapter, a person who exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive or improvised device, and who intends to, and does, intimidate or harass a person, is guilty of a class C felony.

**Sec. 5.** RCW 70.74.191 and 1985 c 191 s 2 are each amended to read as follows:

The laws contained in this chapter and the ensuing regulations prescribed by the department of labor and industries shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission and the Washington state patrol;

(2) The laboratories of schools, colleges and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage and use of explosives or blasting agents in the normal and emergency operations of federal agencies and departments including the regular United States military departments on military reservations, or the duly authorized militia of any state or territory, or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) The importation, sale, possession, and use of fireworks, signaling devices, flares, fuses, and torpedoes;

(6) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries; and

(7) Any violation under this chapter if any existing ordinance of any city, municipality or county is more stringent than this chapter.

**Sec. 6.** RCW 70.74.270 and 1992 c 7 s 49 are each amended to read as follows:

Every person who maliciously places any explosive (~~(substance or material)~~) or improvised device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded, shall be punished as follows:

(1) If the circumstances and surroundings are such that the safety of any person might be endangered by the explosion, by imprisonment in a state correctional facility for not more than twenty years;

(2) In every other case by imprisonment in a state correctional facility for not more than five years.

Sec. 7. RCW 70.74.295 and 1972 ex.s. c 88 s 3 are each amended to read as follows:

It shall be unlawful for any person to abandon explosives or ~~((explosive substances))~~ improvised devices. Violation of this section is a gross misdemeanor or punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 8. (1) Explosives, improvised devices, and components of explosives and improvised devices that are possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of a provision of this chapter are subject to seizure and forfeiture by a law enforcement agency and no property right exists in them.

(2) Seizure of explosives, improvised devices, and components of explosives and improvised devices under subsection (1) of this section may be made if:

(a) The seizure is incident to arrest or a search under a search warrant;

(b) The explosives, improvised devices, or components have been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the explosives, improvised devices, or components are directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the explosives, improvised devices, or components were used or were intended to be used in violation of this chapter.

(3) A law enforcement agency shall destroy explosives seized under this chapter when it is necessary to protect the public safety and welfare. When destruction is not necessary to protect the public safety and welfare, and the explosives are not being held for evidence, a seizure pursuant to this section commences proceedings for forfeiture.

(4) The law enforcement agency under whose authority the seizure was made shall issue a written notice of the seizure and commencement of the forfeiture proceedings to the person from whom the explosives were seized, to any known owner of the explosives, and to any person who has a known interest in the explosives. The notice shall be issued within fifteen days of the seizure. The notice of seizure and commencement of the forfeiture proceedings shall be served in the same manner as provided in RCW 4.28.080 for service of a summons. The law enforcement agency shall provide a form by which the person or persons may request a hearing before the law enforcement agency to contest the seizure.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the explosives, improvised devices, or components within thirty days of the date the notice was issued, the seized explosives, devices, or components shall be deemed forfeited.

(6) If, within thirty days of the issuance of the notice, any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items seized, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement or the officer's designee of the seizing agency, except that the person asserting the claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the items seized is more than five hundred dollars. The hearing and any appeal shall be conducted according to chapter 34.05 RCW. The seizing law enforcement agency shall bear the burden of proving that the person (a) has no lawful right of ownership or possession and (b) that the items seized were possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of a provision of this chapter with the person's knowledge or consent.

(7) The seizing law enforcement agency shall promptly return the items seized to the claimant upon a determination that the claimant is entitled to possession of the items seized.

(8) If the items seized are forfeited under this statute, the agency shall destroy the explosives. When explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized loses all rights of action against the law enforcement agency or its employees acting within the scope of their employment, or other governmental entity or employee involved with the seizure and destruction of explosives.

(9) This section is not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the department of labor and industries pursuant to chapter 49.17 RCW as provided in RCW 70.74.390.

NEW SECTION. Sec. 9. A person who knows of a theft or loss of explosives for which that person is responsible under this chapter shall report the theft or loss to the local law enforcement agency within twenty-four hours of discovery of the theft or loss. The local law enforcement agency shall immediately report the theft or loss to the department of labor and industries.

NEW SECTION. Sec. 10. Sections 4, 8, and 9 of this act are each added to chapter 70.74 RCW.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 20, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

CHAPTER 294

[Engrossed Substitute House Bill 1157]

MINORS—EMANCIPATION PROCEDURES

Effective Date: 1/1/94

AN ACT Relating to the emancipation of minors; amending RCW 49.12.121; adding a new chapter to Title 13 RCW; and providing an effective date.

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

**NEW SECTION. Sec. 1.** Any minor who is sixteen years of age or older and who is a resident of this state may petition in the superior court for a declaration of emancipation.

**NEW SECTION. Sec. 2.** (1) A petition for emancipation shall be signed and verified by the petitioner, and shall include the following information: (a) The full name of the petitioner, the petitioner’s birthdate, and the state and county of birth; (b) a certified copy of the petitioner’s birth certificate; (c) the name and last known address of the petitioner’s parent or parents, guardian, or custodian; (d) the petitioner’s present address, and length of residence at that address; (e) a declaration by the petitioner indicating that he or she has the ability to manage his or her financial affairs, including any supporting information; and (f) a declaration by the petitioner indicating that he or she has the ability to manage his or her personal, social, educational, and nonfinancial affairs, including any supporting information.

(2) A reasonable filing fee not to exceed fifty dollars shall be set by the court.

**NEW SECTION. Sec. 3.** The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner’s parent or parents, guardian, or custodian at least fifteen days before the emancipation hearing. No summons shall be required. Service shall be waived if proof is made to the court that the address of the parent or parents, guardian, or custodian is unavailable or unascertainable. The petitioner shall also serve notice of the hearing on the department if the petitioner is subject to dependency disposition order under RCW 13.34.130. The hearing shall be held no later than sixty days after the date on which the petition is filed.

**NEW SECTION. Sec. 4.** The hearing on the petition shall be before a judge, sitting without a jury. Prior to the presentation of proof the judge shall determine whether: (1) The petitioning minor understands the consequences of the petition regarding his or her legal rights and responsibilities; (2) a guardian ad litem should be appointed to investigate the allegations of the petition and file a report with the court.

**NEW SECTION. Sec. 5.** (1) The court shall grant the petition for emancipation, except as provided in subsection (2) of this section, if the petitioner proves the following facts by clear and convincing evidence: (a) That the petitioner is sixteen years of age or older; (b) that the petitioner is a resident of the state; (c) that the petitioner has the ability to manage his or her financial

affairs; and (d) that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

(2) A parent, guardian, custodian, or in the case of a dependent minor, the department, may oppose the petition for emancipation. The court shall deny the petition unless it finds, by clear and convincing evidence, that denial of the grant of emancipation would be detrimental to the interests of the minor.

(3) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree. The decree shall instruct the petitioner to obtain a Washington driver's license or a Washington identification card and direct the department of licensing make a notation of the emancipated status on the license or identification card.

**NEW SECTION.** Sec. 6. (1) An emancipated minor shall be considered to have the power and capacity of an adult, except as provided in subsection (2) of this section. A minor shall be considered emancipated for the purposes of, but not limited to:

(a) The termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligations imposed because of marital dissolution;

(b) The right to sue or be sued in his or her own name;

(c) The right to retain his or her own earnings;

(d) The right to establish a separate residence or domicile;

(e) The right to enter into nonvoidable contracts;

(f) The right to act autonomously, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;

(g) The right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status; and

(h) The right to give informed consent for receiving health care services.

(2) An emancipated minor shall not be considered an adult for: (a) The purposes of the adult criminal laws of the state unless the decline of jurisdiction procedures contained in RCW 13.40.110 are used; (b) the criminal laws of the state when the emancipated minor is a victim and the age of the victim is an element of the offense; or (c) those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to the minor because of the minor's age.

**NEW SECTION.** Sec. 7. A declaration of emancipation obtained by fraud is voidable. The voiding of any such declaration shall not affect any obligations, rights, or interests that arose during the period the declaration was in effect.

**NEW SECTION.** Sec. 8. The office of the administrator for the courts shall prepare and distribute to the county court clerks appropriate forms for minors seeking to initiate a petition of emancipation.

Sec. 9. RCW 49.12.121 and 1989 c 1 s 3 are each amended to read as follows:

(1) The ~~((committee, or the director,))~~ department may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business, or occupation in the state of Washington and may adopt special rules for the protection of the safety, health, and welfare of minor employees. ~~((The minimum wage for minors shall be as prescribed in RCW 49.46.020.))~~ However, the rules may not limit the hours per day or per week, or other specified work period, that may be worked by minors who are emancipated by court order.

(2) The ~~((committee))~~ department shall issue work permits to employers for the employment of minors, after being assured the proposed employment of a minor meets the standards ~~((set forth concerning))~~ for the health, safety, and welfare of minors as set forth in the rules ~~((and regulations promulgated))~~ adopted by the ~~((committee))~~ department. No minor person shall be employed in any occupation, trade, or industry subject to this 1973 amendatory act, unless a work permit has been properly issued, with the consent of the parent, guardian, or other person having legal custody of the minor and with the approval of the school which such minor may then be attending. However, the consent of a parent, guardian, or other person, or the approval of the school which the minor may then be attending, is unnecessary if the minor is emancipated by court order.

(3) The minimum wage for minors shall be as prescribed in RCW 49.46.020.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 13 RCW.

NEW SECTION. Sec. 11. This act shall take effect January 1, 1994.

Passed the House April 19, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 295**

[House Bill 1168]

**SHELLFISH CULTIVATION—TIDELANDS LEASES FOR—REVISIONS**

**Effective Date: 7/25/93**

AN ACT Relating to leasing beds of tidal waters; and amending RCW 79.96.010 and 79.96.050.

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

Sec. 1. RCW 79.96.010 and 1982 1st ex.s. c 21 s 134 are each amended to read as follows:



The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by section 1, Article XV, of the Washington state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed ~~((ten))~~ thirty years.

~~((Where the lands are used for the cultivation and harvesting of oysters, the parcels leased shall not exceed forty acres.~~

~~Where the lands are used for the cultivation and harvesting of clams or other aquaculture use, the department of natural resources may, in its discretion, grant leases for larger parcels.))~~

Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department.

**Sec. 2.** RCW 79.96.050 and 1982 1st ex.s. c 21 s 138 are each amended to read as follows:

The department of natural resources may, upon the filing of an application for a renewal lease, cause the tidelands or beds of navigable waters to be inspected, and if he deem[s] it in the best interests of the state to re-lease said lands, he shall issue to the applicant a renewal lease for such further period not exceeding ~~((ten))~~ thirty years and under such terms and conditions as may be determined by the department: PROVIDED, That in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fisheries.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 296

[Substitute House Bill 1169]

### MARINE FINFISH REARING FACILITIES—WASTE DISCHARGE PERMITS

Effective Date: 7/25/93

AN ACT Relating to marine finfish rearing facilities; adding a new section to chapter 90.48 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 90.48 RCW to read as follows:

(1) For the purposes of this section "marine finfish rearing facilities" means those private and public facilities located within the salt water of the state where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

(2) Not later than October 31, 1994, the department shall adopt criteria under chapter 34.05 RCW for allowable sediment impacts from organic enrichment due to marine finfish rearing facilities.

(3) Not later than June 30, 1995, the department shall adopt standards under chapter 34.05 RCW for waste discharges from marine finfish rearing facilities. In establishing these standards, the department shall review and incorporate, to the extent possible, studies conducted by state and federal agencies on waste discharges from marine finfish rearing facilities, and any reports and other materials prepared by technical committees on waste discharges from marine finfish rearing facilities. The department shall approve or deny discharge permit applications for marine finfish rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter 43.21C RCW. The department shall notify applicants as soon as it determines that a proposed discharge meets or fails to comply with the standards adopted pursuant to this section, or if a time period longer than one hundred eighty days is necessary to satisfy public participation requirements of the state environmental policy act.

(4) The department may adopt rules to exempt marine finfish rearing facilities not requiring national pollutant discharge elimination system permits under the federal water pollution control act from the discharge permit requirement.

**NEW SECTION.** Sec. 2. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act shall be null and void.

Passed the House April 20, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 297

[Substitute House Bill 1195]

### HUMAN REMAINS—RIGHT OF PERSON TO CONTROL DISPOSITION OF OWN REMAINS

**Effective Date:** 7/25/93

AN ACT Relating to the right of a person to control the disposition of a person's remains; and amending RCW 68.50.160.

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

**Sec. 1.** RCW 68.50.160 and 1992 c 108 s 1 are each amended to read as follows:

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person (~~(, unless other directions have been given by the decedent,)~~) vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

~~((+))~~ (a) The surviving spouse.

~~((2))~~ (b) The surviving adult children of the decedent.

~~((3))~~ (c) The surviving parents of the decedent.

(d) The surviving siblings of the decedent.

(e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent (~~(hereinbefore mentioned)~~) in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent.

Passed the House April 19, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 298

[Substitute House Bill 1211]

EDUCATIONAL SERVICE DISTRICTS—COOPERATIVE AND  
INFORMATIONAL SERVICES

Effective Date: 7/25/93

AN ACT Relating to educational service districts; reenacting and amending RCW 28A.310.200; and creating a new section.

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

**Sec. 1.** RCW 28A.310.200 and 1990 c 159 s 1 and 1990 c 33 s 278 are each reenacted and amended to read as follows:

In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Approve the budgets of the educational service district in accordance with the procedures provided for in this chapter.

(2) Meet regularly according to the schedule adopted at the organization meeting and in special session upon the call of the chair or a majority of the board.

(3) Approve the selection of educational service district personnel and clerical staff as provided in RCW 28A.310.230.

(4) Fix the amount of and approve the bonds for those educational service district employees designated by the board as being in need of bonding.

(5) Keep in the educational service district office a full and correct transcript of the boundaries of each school district within the educational service district.

(6) Acquire by borrowing funds or by purchase, lease, devise, bequest, and gift and otherwise contract for real and personal property necessary for the operation of the educational service district and to the execution of the duties of the board and superintendent thereof and sell, lease, or otherwise dispose of that property not necessary for district purposes. No real property shall be acquired or alienated without the prior approval of the state board of education and the acquisition or alienation of all such property shall be subject to such provisions as the board may establish. When borrowing funds for the purpose of acquiring property, the educational service district board shall pledge as collateral the property to be acquired. Borrowing shall be evidenced by a note or other instrument between the district and the lender. The authority to borrow under this subsection shall be limited to educational service districts serving a minimum of two hundred thousand students in grades kindergarten through twelve.

(7) Under RCW 28A.310.010, upon the written request of the board of directors of a local school district or districts served by the educational service district, the educational service district board of directors may provide cooperative and informational services not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that support the education of preschool through twelfth grade students in the public schools or that support the effective, efficient, or safe management and

operation of the school district or districts served by the educational service district.

(8) Adopt such bylaws and rules and regulations for its own operation as it deems necessary or appropriate.

~~((8))~~ (9) Enter into contracts, including contracts with common and educational service districts and the school for the deaf and the school for the blind for the joint financing of cooperative service programs conducted pursuant to RCW 28A.310.180(3), and employ consultants and legal counsel relating to any of the duties, functions, and powers of the educational service districts.

NEW SECTION. Sec. 2. The Washington state institute for public policy shall submit to the legislature by January 10, 1994, a report with recommendations for the design of a comprehensive study of the role and performance of educational service districts.

Passed the House April 19, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 299

[House Bill 1246]

### WORKERS' COMPENSATION—COMPENSATION AND BENEFITS FOR EMPLOYEE RETURNING TO WORK

Effective Date: 7/1/93

AN ACT Relating to employee compensation and benefits during return to work; amending RCW 51.32.090; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 51.32.090 and 1988 c 161 s 4 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the

proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent.

(4)(a) Whenever ~~((an))~~ the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the ~~((available))~~ work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. ~~((If))~~ The worker's temporary total disability payments shall continue until the worker is released by his or her physician for ~~((said))~~ the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

**NEW SECTION. Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 300

[Substitute House Bill 1260]

### SOLID WASTE COMPANIES—RATE AND TARIFF CHANGES—NOTICE

Effective Date: 7/25/93

AN ACT Relating to the review of solid waste collection company tariff filings by the utilities and transportation commission; amending RCW 81.04.130 and 81.28.050; and adding a new section to chapter 70.95 RCW.

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

**Sec. 1.** RCW 81.04.130 and 1984 c 143 s 1 are each amended to read as follows:

Whenever any public service company, other than a railroad company, files with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, fare, charge, rental, or toll previously charged, the commission has power, either upon its own motion or upon complaint, upon notice, to hold a hearing concerning the proposed change and the reasonableness and justness of it. Pending the hearing and the decision the commission may suspend the operation of the rate, fare, charge, rental, or toll, if the change is proposed by a common carrier subject to the jurisdiction of the commission, other than a solid waste collection company, for a period not exceeding seven months, and, if proposed by a ~~((public service company other than such a common carrier))~~ solid waste collection company, for a period not exceeding ten months from the time the change would otherwise go into effect. After a full hearing the commission may make such order in reference to the change as would be provided in a hearing initiated after the change had become effective.

At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, fare, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable is upon the public service company. When any common carrier

subject to the jurisdiction of the commission files any tariff, classification, rule, or regulation the effect of which is to decrease any rate, fare, or charge, the burden of proof to show that such decrease is just and reasonable is upon the common carrier.

**Sec. 2.** RCW 81.28.050 and 1984 c 143 s 5 are each amended to read as follows:

Unless the commission otherwise orders, no change may be made in any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier other than a rail carrier, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, no such change may be made except after forty-five days' notice to the commission and to the public. The notice shall be published as provided in RCW 81.28.040 and shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, classification, fare, or charge will go into effect. All proposed changes shall be shown by printing, filing, and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. In the case of a change proposed by a rail carrier, except for changes to rail contracts between a rail carrier and a shipper authorized under RCW 81.34.070, which changes become effective in accordance with that section, a proposal resulting in a rate increase or a new rate shall not become effective for twenty days after the notice is published, and a proposal resulting in a rate decrease shall not become effective for ten days after the notice is published. The commission, for good cause shown, may by order allow changes in rates without requiring the notice and the publication time periods specified in this section. When any change is made in any rate, fare, charge, classification, rule, or regulation, attention shall be directed to the change by some character on the schedule. The character and its placement shall be designated by the commission. The commission may, by order, for good cause shown, allow changes in any rate, fare, charge, classification, rule, or regulation without requiring any character to indicate each and every change to be made.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 70.95 RCW to read as follows:

To provide solid waste collection companies with sufficient time to prepare and submit tariffs and rate filings for public comment and commission approval, the owner or operator of a transfer station, landfill, or facility used to burn solid waste shall provide seventy-five days' notice to solid waste collection companies of any change in tipping fees and disposal rate schedules. The notice period shall begin on the date individual notice to a collection company is delivered to the company or is postmarked.

A collection company may agree to a shorter notice period: **PROVIDED,** That such agreement by a company shall not affect the notice requirements for rate filings under RCW 81.28.050.



The owner of a transfer station, landfill or facility used to burn solid waste may agree to provide companies with a longer notice period.

"Solid waste collection companies" as used in this section means the companies regulated by the commission pursuant to chapter 81.77 RCW.

Passed the House April 22, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 301

[Engrossed House Bill 1271]

### BUSES AND TRUCKS—LENGTH LIMITS

Effective Date: 7/25/93

AN ACT Relating to lawful vehicle lengths; and amending RCW 46.44.030.

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

**Sec. 1.** RCW 46.44.030 and 1991 c 113 s 1 are each amended to read as follows:

It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus or school bus with an overall length not to exceed forty-six feet, or ~~((2))~~ (3) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate on the highways of this state any combination of vehicles that contains a vehicle in excess of forty-eight feet, with or without load.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of forty-eight feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty-one feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer with an overall length, with or without load, in excess of seventy-five feet. However, a combination of vehicles transporting automobiles or boats may have a front overhang of three feet and a rear overhang of four feet beyond this allowed length.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance

lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 302**

[Engrossed Substitute House Bill 1307]

**WASHINGTON SERVICE CORPS—REVISIONS**

**Effective Date:** 7/1/93

AN ACT Relating to the Washington service corps; amending RCW 50.65.030, 50.65.040, 50.65.060, and 50.65.080; adding new sections to chapter 50.65 RCW; repealing RCW 50.65.900; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 50.65.030 and 1987 c 167 s 3 are each amended to read as follows:

The Washington service corps is established within the employment security department. The commissioner shall:

(1) Appoint a director (~~for the exchange~~) and other personnel as necessary to carry out the purposes of this chapter;

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies or departments providing youth services to ensure that funds appropriated for the purposes of this chapter will not be expended to duplicate existing services, but will increase the services of youth to the state;

(3) The employment security department is authorized to place subgrants with other federal, state, and local governmental agencies and private agencies to provide youth employment projects and to increase the numbers of youth employed;

(4) Determine appropriate financial support levels by private business, community groups, foundations, public agencies, and individuals which will provide matching funds for enrollees in service projects under work agreements. The matching funds requirement may be waived for public agencies or reduced for private agencies;

(5) Recruit enrollees who are residents of the state unemployed at the time of application and are at least eighteen years of age but have not reached their twenty-sixth birthday;

(6) Recruit supervising agencies to host the enrollees in full-time service activities which shall not exceed ~~((six))~~ eleven months' duration ~~(, which may be extended for an additional six months by mutual consent);~~);

(7) Assist supervising agencies in the development of scholarships and matching funds from private and public agencies, individuals, and foundations in order to support a portion of the enrollee's stipend and benefits;

(8) Develop general employment guidelines for placement of enrollees in supervising agencies to establish appropriate authority for hiring, firing, grievance procedures, and employment standards which are consistent with state and federal law;

(9) Match enrollees with appropriate public agencies and available service projects;

(10) Monitor enrollee activities for compliance with this chapter and compliance with work agreements;

(11) Assist enrollees in transition to employment upon termination from the programs, including such activities as orientation to the labor market, on-the-job training, and placement in the private sector;

(12) Establish a program for providing incentives to encourage successful completion of terms of enrollment in the service corps and the continuation of educational pursuits. Such incentives shall be in the form of educational assistance equivalent to two years of community or technical college tuition for eleven months of service. Educational assistance funding shall only be used for tuition, fees, and course-related books and supplies. Enrollees who receive educational assistance funding shall start using it within one year of their service completion and shall finish using it within four years of their service completion;

(13) Enter into agreements with the state's community and technical college system and other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics for those participants who may benefit by participation in such classes. Participation is not mandatory but shall be strongly encouraged.

**Sec. 2.** RCW 50.65.040 and 1987 c 167 s 4 are each amended to read as follows:

The commissioner may select and enroll in the Washington service corps program any person who is at least eighteen years of age but has not reached their twenty-sixth birthday, is a resident of the state, and who is not for medical, legal, or psychological reasons incapable of service. ~~((In the selection of enrollees of the service corps, preference shall be given to youths residing in areas, both urban and rural, in which there exists substantial unemployment above the state average.))~~ Efforts shall be made to enroll youths who are economically, socially, physically, or educationally disadvantaged. The commissioner may prescribe such additional standards and procedures in

consultation with supervising agencies as may be necessary in conformance with this chapter. In addition, the commissioner may select and enroll youth fourteen to seventeen years of age on special projects during the summer and at other times during the school year that may complement and support their school curriculum or that link and support service with learning.

**Sec. 3.** RCW 50.65.060 and 1987 c 167 s 6 are each amended to read as follows:

Placements in the Washington service corps shall be made in supervising agencies under work agreements as provided under this chapter and shall include those assignments which provide for addressing community needs and conservation problems and will assist the community in economic development efforts. Each work agreement shall:

(1) Demonstrate that the service project is appropriate for the enrollee's interests, skills, and abilities and that the project is designed to meet unmet community needs;

(2) Include a requirement of regular performance evaluation. This shall include clear work performance standards set by the supervising agency and procedures for identifying strengths, recommended improvement areas and conditions for probation or dismissal of the enrollee; and

(3) Include a commitment for partial financial support for the enrollee (~~for~~ ~~a~~) from private industry, public (~~agency~~) agencies, community groups, or foundations. The commissioner may establish additional standards for the development of placements for enrollees with supervising agencies and assure that the work agreements comply with those standards. This section shall not apply to conservation corps programs established by chapter 43.220 RCW.

Agencies of the state may use the (~~youth employment exchange~~) Washington service corps for the purpose of employing youth qualifying under this chapter.

**NEW SECTION. Sec. 4.** For each enrollee, the work agreements, or combination of work agreements, developed under RCW 50.65.060 shall:

(1) Include a variety of experiences consisting of: Indoor activities; outdoor activities; and volunteer activities;

(2) Provide time for participation in a core training program common to all participants.

**NEW SECTION. Sec. 5.** The Washington service corps scholarship account is created in the custody of the state treasurer. The account shall consist of a portion of Washington service corps funding, deposited by the commissioner, in an amount sufficient to provide for the future awarding of educational assistance grants described in RCW 50.65.030. Expenditures from the account may be used only for educational assistance grants described in RCW 50.65.030. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All

earnings of investments of surplus balances in the account shall be deposited to the treasury income account created in RCW 43.84.092.

**Sec. 6.** RCW 50.65.080 and 1983 1st ex.s. c 50 s 8 are each amended to read as follows:

The commissioner shall seek and may accept, on behalf of the (~~youth employment exchange~~) Washington service corps, charitable donations of cash and other assistance including, but not limited to, equipment and materials if the donations are available for appropriate use for the purposes set forth in this chapter.

NEW SECTION. **Sec. 7.** RCW 50.65.900 and 1987 c 167 s 9 & 1983 1st ex.s. c 50 s 14 are each repealed.

NEW SECTION. **Sec. 8.** Sections 4 and 5 of this act are each added to chapter 50.65 RCW.

NEW SECTION. **Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

NEW SECTION. **Sec. 10.** A new section is added to chapter 50.65 RCW to read as follows:

No individual may participate in the Washington serves program created by chapter . . . (Substitute House Bill No. 1969), Laws of 1993, if the person has previously participated for six months or longer in the Washington service corps within the last three years.

Passed the House April 25, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 303

[Substitute House Bill 1316]

### CITY AND TOWN COUNCILMEMBERS—SERVICE AS RESERVE LAW ENFORCEMENT OFFICER

**Effective Date:** 7/25/93

AN ACT Relating to members of city and town legislative bodies serving the city or town in additional part-time capacities; and amending RCW 35.21.770 and 35A.11.110.

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

**Sec. 1.** RCW 35.21.770 and 1974 ex.s. c 60 s 1 are each amended to read as follows:

Notwithstanding any other provision of law, the legislative body of any city or town, by resolution adopted by (~~unanimous~~) a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer

~~((firemen))~~ fire fighters or reserve law enforcement officers, or both, and to receive the same compensation, insurance and other benefits as are applicable to other volunteer ~~((firemen))~~ fire fighters or reserve law enforcement officers employed by the city or town.

Sec. 2. RCW 35A.11.110 and 1974 ex.s. c 60 s 2 are each amended to read as follows:

Notwithstanding any other provision of law, the legislative body of any code city, by resolution adopted by ~~((unanimous))~~ a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer ~~((firemen))~~ fire fighters or reserve law enforcement officers, or both, and to receive the same compensation, insurance and other benefits as are applicable to other volunteer ~~((firemen))~~ fire fighters or reserve law enforcement officers employed by the code city.

- Passed the House April 19, 1993.
- Passed the Senate April 6, 1993.
- Approved by the Governor May 12, 1993.
- Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 304**

[Substitute House Bill 1325]

**AIR SERVICES CONTRACTS—DEPARTMENT OF GENERAL ADMINISTRATION  
TO OFFER TO LOCAL GOVERNMENT EMPLOYEES**

**Effective Date: 7/25/93**

AN ACT Relating to giving local governments the option to acquire services or goods under purchasing arrangements made by state agencies; and creating a new section.

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

**NEW SECTION. Sec. 1.** The department, in consultation with associations of local governments, shall develop a proposal to offer contracts for air service fares to local government employees at the best available rates. In developing the proposal, the elements to be considered include, but are not limited to:

- (1) Guidelines for predicting and reporting the volume, frequency, and destinations of air travel requirements of local government employees;
- (2) A cost-effective system for aggregating bookings, accounting, and payments for local employee air travel;
- (3) The most appropriate means for preparing invitations to bid, that will offer the greatest possible opportunity for local governments to take advantage of bulk rates in a manner that will avoid delay in putting the contracts into place;
- (4) Establishment of an ongoing clearinghouse of favorable rates, schedules, and destinations that can be made readily available to local government managers in planning air travel for their employees; and

(5) Any other services that will assist local governments in planning air travel on essential public business.

The results of the consultation and progress on the proposal shall be reported to the senate committee on government operations and the house of representatives committee on local government by December 15, 1993.

Passed the House April 19, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 305

[Substitute House Bill 1356]

### PUBLIC WATER SYSTEMS—COMPLIANCE AND PENALTIES REVISED

Effective Date: 7/25/93

AN ACT Relating to enforcement of public water system requirements; amending RCW 70.119A.030, 70.119A.040, and 70.119A.050; adding a new section to chapter 70.119A RCW; and prescribing penalties.

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

**Sec. 1.** RCW 70.119A.030 and 1991 c 304 s 3 are each amended to read as follows:

(1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for ~~((failure to comply with an order of the department, or of an authorized local board of health, when the order:~~

~~(a) Directs any person to stop work on the construction or alteration of a public water system when plans and specifications for the construction or alteration have not been approved as required by the regulations, or when the work is not being done in conformity with approved plans and specifications;~~

~~(b) Requires any person to eliminate a cross connection to a public water system by a specified time; or~~

~~(c) Requires any person to cease violating any regulation relating to public water systems, to take specific actions within a specified time to place a public water system in compliance with regulations adopted under chapters 43.20 and 70.119 RCW, to apply for an operating permit as required under RCW 70.119A.110 or to comply with any conditions or requirements imposed as part of an operating permit)) violation of laws or rules regulating public water systems and administered by the department of health.~~

**Sec. 2.** RCW 70.119A.040 and 1990 c 133 s 8 are each amended to read as follows:

(1)(a) In addition to or as an alternative to any other penalty ((provided)) or action allowed by law, ((every)) a person who ((commits any of the acts or omissions in RCW 70.119A.030 shall be subjected)) violates a law or rule regulating public water systems and administered by the department of health is subject to a penalty ((in an amount of not less than five hundred dollars. The maximum penalty shall be)) of not more than five thousand dollars per day for every such violation, or, in the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation.

(b) In addition, a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required departmental approval is subject to penalties of not more than five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system is anticipated to serve. The total penalty that may be imposed pursuant to this subsection (1)(b) is five hundred thousand dollars.

(c) Every person who, through an act of commission or omission, procures, aids, or abets ((in the)) a violation ((shall be)) is considered to have violated the provisions of this section and ((shall be)) is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil ~~((fine))~~ penalty is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for ~~((remission or mitigation is made as provided in subsection (3) of this section or unless application for))~~ an adjudicative proceeding is filed as provided in subsection ~~((4))~~ (3) of this section.

~~(3) (Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall not mitigate the fines below the minimum penalty prescribed in subsection (1) of this section. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner as it may deem proper. When an application for remission or mitigation is made, a penalty incurred~~



~~under this section is due twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.~~

~~(4))~~ Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

~~((5))~~ (4) A penalty imposed by a final administrative order ~~((after an adjudicative proceeding))~~ is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served and such reasonable attorney's fees as are incurred in securing the final administrative order.

(5) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorney's fees for the cost of the attorney general's office in representing the department.

~~(6)~~ ~~((The attorney general may bring an action in the name of the department in the superior court of Thurston county, or of any county in which such violator may do business, to collect a penalty.~~

~~(7))~~ If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the public water system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(7) A judgment entered under subsection (5) or (6) of this section shall have the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(8) All penalties imposed under this section shall be payable to the state treasury and credited to the general fund.

(9) Except in cases of public health emergencies, the department may not impose monetary penalties under this section unless a prior effort has been made to resolve the violation informally.

**Sec. 3.** RCW 70.119A.050 and 1989 c 422 s 8 are each amended to read as follows:

Each local board of health that is enforcing the regulations under an agreement with the department allocating state and local responsibility is authorized to impose and collect civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by RCW 70.119A.030 and 70.119A.040, except that judgment shall be entered in the name of the local board penalties shall be placed into the general fund of the county, city, or town operating the local board of health(~~(7 and the prosecuting attorney, or city, or town attorney shall bring the actions to collect the unpaid penalties)~~).

**NEW SECTION. Sec. 4.** A new section is added to chapter 70.119A RCW to read as follows:

(1)(a) Except as otherwise provided in (b) of this subsection, the secretary or his or her designee shall have the right to enter a premises under the control of a public water system at reasonable times with prior notification in order to determine compliance with laws and rules administered by the department of health to test, inspect, or sample features of a public water system and inspect, copy, or photograph monitoring equipment or other features of a public water system, or records required to be kept under laws or rules regulating public water systems. For the purposes of this section, "premises under the control of a public water system" does not include the premises or private property of a customer of a public water system past the point on the system where the service connection is made.

(b) The secretary or his or her designee need not give prior notification to enter a premises under (a) of this subsection if the purpose of the entry is to ensure compliance by the public water system with a prior order of the department or if the secretary or the secretary's designee has reasonable cause to believe the public water system is violating the law and poses a serious threat to public health and safety.

(2) The secretary or his or her designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant may be issued for the purposes of inspecting or examining property, buildings, premises, place, books, records, or other physical evidence, or conducting tests or taking samples. The warrant shall be issued upon probable cause. It is sufficient probable cause to show any of the following:

(a) The inspection, examination, test, or sampling is pursuant to a general administrative plan to determine compliance with laws or rules administered by the department; or

(b) The secretary or his or her designee has reason to believe that a violation of a law or rule administered by the department has occurred, is occurring, or may occur.

(3) The local health officer or the designee of a local health officer of a local board of health that is enforcing rules regulating public water systems under an agreement with the department allocating state and local responsibility is authorized to conduct investigations and to apply for, obtain, and execute administrative search warrants necessary to perform the local board's agreed-to responsibilities under the same limitations and requirements imposed on the department under this section.

Passed the House April 19, 1993.

Passed the Senate April 1, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 306

[Substitute House Bill 1357]

### PUBLIC WATER SYSTEMS—OPERATOR CERTIFICATION—FEE SCHEDULES

Effective Date: 7/25/93

AN ACT Relating to public water supply system operators; amending RCW 70.119.100, 70.119.120, and 70.119.150; and adding a new section to chapter 70.119 RCW.

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

**Sec. 1.** RCW 70.119.100 and 1991 c 305 s 6 are each amended to read as follows:

The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under ~~((RCW 43.70.110))~~ section 4 of this act, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under ~~((RCW 43.70.110))~~ section 4 of this act and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants.

**Sec. 2.** RCW 70.119.120 and 1977 ex.s. c 99 s 12 are each amended to read as follows:

To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations.

(3) Assess fees determined pursuant to section 4 of this act on public water systems to support the waterworks operator certification program.

**Sec. 3.** RCW 70.119.150 and 1977 ex.s. c 99 s 15 are each amended to read as follows:

The waterworks operator certification account is created in the general fund of the state treasury. All fees paid pursuant to RCW 70.119.100, 70.119.120(3), and any other receipts realized in the administration of this chapter shall be ((paid into the general fund)) deposited in the waterworks operator certification account. Moneys in the account shall be spent only after appropriation. Moneys from the account shall be used by the department of health to carry out the purposes of the waterworks operator certification program.

**NEW SECTION. Sec. 4.** A new section is added to chapter 70.119 RCW to read as follows:

The department of health certifies individuals responsible for the active daily technical operation of public water supply systems and monitors public water supply systems to ensure that such systems comply with the requirements of this chapter and regulations implementing this chapter. The secretary shall establish a schedule of fees for certified operator applicants and renewal licenses and a separate schedule of fees for public water systems to support the waterworks operator certification program. The fees shall be set at a level sufficient for the department to recover the costs of the waterworks operator certification program and in accordance with the procedures established under RCW 43.70.250.

Passed the House March 13, 1993.

Passed the Senate April 23, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 307

[House Bill 1379]

## MOTOR VEHICLES AND DEALERS—LICENSING

Effective Date: 7/25/93

AN ACT Relating to motor vehicles; amending RCW 46.12.050, 46.68.010, 82.44.120, 46.70.021, 46.70.023, 46.70.041, 46.70.051, 46.70.083, 46.70.140, 46.70.290, 46.70.300, 46.87.020, 46.87.030, 46.87.080, 46.87.310, and 46.87.340; adding a new section to chapter 46.87 RCW; adding new sections to chapter 46.70 RCW; recodifying RCW 46.12.120 and 46.12.140; repealing RCW 46.70.150 and 46.87.160; and prescribing penalties.

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

**Sec. 1.** RCW 46.12.050 and 1990 c 238 s 3 are each amended to read as follows:

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

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

All certificates of ownership of motor vehicles issued after April 30, 1990, shall reflect the odometer reading as provided by the odometer disclosure statement submitted with the title application involving a ~~((change of registration))~~ transfer of ownership.

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

Upon issuance of the certificate of license registration and certificate of ownership and upon any reissue thereof, the department shall deliver the certificate of license registration to the registered owner and the certificate of ownership to the legal owner, or both to the person who is both the registered owner and legal owner.

**Sec. 2.** RCW 46.68.010 and 1989 c 68 s 1 are each amended to read as follows:

Whenever any license fee, paid under the provisions of this title, has been erroneously paid, either wholly or in part, the ~~((person paying the fee, upon satisfactory proof to the director of licensing, shall be))~~ payer is entitled to have

refunded the amount so erroneously paid. A renewal license fee paid prior to the actual expiration date of the license being renewed shall be deemed to be erroneously paid if the vehicle for which the renewal license ~~((is being))~~ was purchased is destroyed or permanently removed from the state prior to the beginning date of the registration period for which the renewal fee ~~((is being))~~ was paid. Upon such refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto ~~((+ PROVIDED, That))~~. No claim for refund shall be allowed for such erroneous payments unless filed with the director within ~~((thirteen months))~~ three years after such claimed erroneous payment was made.

If due to error a person has been required to pay a vehicle license fee under this title and an excise tax ~~((which))~~ under Title 82 RCW that amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

**Sec. 3.** RCW 82.44.120 and 1990 c 42 s 307 are each amended to read as follows:

Whenever any person has paid a motor vehicle license fee, and together therewith has paid an excise tax imposed under the provisions of this chapter, and the director ~~((of licensing))~~ determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected.

In case no claim is to be made for the refund of the license fee or any part thereof, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter and a vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of

whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

Any claim for refund of an erroneously excessive amount of excise tax or overpayment of excise tax with a motor vehicle license fee must be filed with the director within three years after the claimed erroneous payment was made.

If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds (~~and the other refunds herein provided for~~) from the general fund and shall mail or deliver the same to the person entitled thereto.

Any person making any false statement under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section is guilty of a gross misdemeanor.

**Sec. 4.** RCW 46.70.021 and 1988 c 287 s 2 are each amended to read as follows:

It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller. It is unlawful for any person other than a licensed vehicle dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney. A person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction is subject to a fine of up to ~~(one)~~ five thousand dollars for each violation and up to one year in jail. A second offense is a class C felony punishable under chapter 9A.20 RCW. A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice. The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section. A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter. Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases.

**Sec. 5.** RCW 46.70.023 and 1991 c 339 s 28 are each amended to read as follows:

(1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. An established place of business shall have an improved display area of not less than three thousand square feet in or immediately adjoining the building, or a display area large enough to display six or more vehicles of the type the dealer is licensed to sell, whichever area is larger. The business of a vehicle dealer, including the display (~~and repair~~) of vehicles, may be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. The dealer shall keep the building open to the public so that they may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event may a room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up in accordance with state law. This subsection does not apply to auction companies that do not own vehicle inventory or sell vehicles from an auction yard.

(2) An auction company shall have office facilities within the state. The books, records, and files necessary to conduct the business shall be maintained at the office facilities. All storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. An auction company shall maintain a telecommunications system.

(3) Auction companies shall post their vehicle dealer license at each auction where vehicles are offered, and shall provide the department with the address of the auction at least three days before the auction.

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: PROVIDED, That the department may grant an exception to the subagency requirement in the specific instance where a licensed dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the Administrative Procedure Act.

(5) All vehicle dealers shall maintain ownership or leasehold throughout the license year of the real property from which they do business. The dealer shall



provide the department with evidence of ownership or leasehold whenever the ownership changes or the lease is terminated.

(6) A subagency shall comply with all requirements of an established place of business, except that auction companies shall comply with the requirements in subsection (2) of this section.

(7) A temporary subagency shall meet all local zoning and building codes for the type of merchandising being conducted. The dealer license certificate shall be posted at the location. No other requirements of an established place of business apply to a temporary subagency. Auction companies are not required to obtain a temporary subagency license.

(8) A wholesale vehicle dealer shall have office facilities in a commercial building within this state, and all storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. A wholesale vehicle dealer shall maintain a telecommunications system. An exterior sign visible from the nearest street shall identify the business name and the nature of business. A wholesale dealer need not maintain a display area as required in this section. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

(9) A retail vehicle dealer shall be open during normal business hours, maintain office and display facilities in a commercially zoned location or in a location complying with all applicable building and land use ordinances, and maintain a business telephone listing in the local directory. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory shall be physically segregated and clearly identified.

(10) A listing dealer need not have a display area if the dealer does not physically maintain any vehicles for display.

(11) A subagency license is not required for a mobile home dealer to display an on-site display model, a consigned mobile home not relocated from its site, or a repossessed mobile home if sales are handled from a principal place of business or subagency. A mobile home dealer shall identify on-site display models, repossessed mobile homes, and those consigned at their sites with a sign that includes the dealer's name and telephone number.

(12) Every vehicle dealer shall advise the department of the location of each and every place of business of the firm and the name or names under which the firm is doing business at such location or locations. If any name or location is changed, the dealer shall notify the department of such change within ten days. The license issued by the department shall reflect the name and location of the firm and shall be posted in a conspicuous place at that location by the dealer.

(13) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity.

**Sec. 6.** RCW 46.70.041 and 1990 c 250 s 64 are each amended to read as follows:

(1) Every application for a vehicle dealer license shall contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his fingerprints, the honesty, truthfulness, and good reputation of the applicant for the license, or of the officers of a corporation making the application;

(b) The applicant's form and place of organization including if the applicant is a corporation, proof that the corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has any unsatisfied judgment in any federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime which directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners;

(f) A business telephone with a listing in the local directory;

(g) The name or names of new vehicles the vehicle dealer wishes to sell;

(h) The names and addresses of each manufacturer from whom the applicant has received a franchise;

~~(i) ((Whether the applicant intends to sell used vehicles, and if so, whether he has space available for servicing and repairs;~~

~~((j))~~ A certificate by a representative of the department, that the applicant's principal place of business and each subagency business location in the state of Washington meets the location requirements as required by this chapter. The certificate shall include proof of the applicant's ownership or lease of the real property where the applicant's principal place of business is established;

~~((k))~~ (j) A copy of a current service agreement with a manufacturer, or distributor for a foreign manufacturer, requiring the applicant, upon demand of any customer receiving a new vehicle warranty to perform or arrange for, within a reasonable distance of his established place of business, the service repair and replacement work required of the manufacturer or distributor by such vehicle warranty. This requirement applies only to applicants seeking to sell, to exchange, to offer, to auction, to solicit, or to advertise new or current-model vehicles with factory or distributor warranties;

~~((l))~~ (k) The class of vehicles the vehicle dealer will be buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising, and which classification or classifications the dealer wishes to be designated as;

~~((m))~~ (1) Any other information the department may reasonably require.

(2) If the applicant is a manufacturer the application shall contain the following information to the extent it is applicable to the applicant:

(a) The name and address of the principal place of business of the applicant and, if different, the name and address of the Washington state representative of the applicant;

(b) The name or names under which the applicant will do business in the state of Washington;

(c) Evidence that the applicant is authorized to do business in the state of Washington;

(d) The name or names of the vehicles that the licensee manufactures;

(e) The name or names and address or addresses of each and every distributor, factory branch, and factory representative;

(f) The name or names and address or addresses of resident employees or agents to provide service or repairs to vehicles located in the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured, unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(g) Any other information the department may reasonably require.

**Sec. 7.** RCW 46.70.051 and 1989 c 301 s 3 are each amended to read as follows:

(1) After the application has been filed, the fee paid, and bond posted, if required the department shall, if no denial order is in effect and no proceeding is pending under RCW ~~((46.70.180 or 46.70.200))~~ 46.70.101, issue the appropriate license, which license, in the case of a vehicle dealer, shall designate the classification of the dealer. Nothing prohibits a vehicle dealer from obtaining licenses for more than one classification, and nothing prevents any vehicle dealer from dealing in other classes of vehicles on an isolated basis.

(2) An auction company licensed under chapter 18.11 RCW may sell at auction all classifications of vehicles under a motor vehicle dealer's license issued under this chapter including motor vehicles, miscellaneous type vehicles, and mobile homes and travel trailers.

**Sec. 8.** RCW 46.70.083 and 1991 c 140 s 2 are each amended to read as follows:

The license of a vehicle dealer or a vehicle manufacturer expires on the date that is twelve consecutive months from the date of issuance. The license may be renewed by filing with the department prior to the expiration of the license, a renewal application containing such information as the department may require to indicate the number of vehicle sales transacted during the past year, and any material change in the information contained in the original application. Failure by the dealer to comply is grounds for denial of the renewal application or dealer license plate renewal.

The dealer's established place of business shall be certified by a representative of the department at least once every ~~((thirty-two))~~ thirty-six months, or more frequently as determined necessary by the department. The certification will verify compliance with the requirements of this chapter for an established place of business. Failure by the dealer to comply at any time is grounds for license suspension or revocation, denial of the renewal application, or monetary assessment.

**Sec. 9.** RCW 46.70.140 and 1973 1st ex.s. c 132 s 17 are each amended to read as follows:

Any vehicle dealer who ~~((shall))~~ knowingly or with reason to know, buys or receives, sells or disposes of, conceals or ~~((have in his))~~ has in the dealer's possession, any vehicle from which the motor or serial number has been removed, defaced, covered, altered, or destroyed, or any dealer, who ~~((shall))~~ removes from or installs in any motor vehicle registered with the department by motor block number, a new or used motor block without immediately notifying the department of such fact upon a form provided by the department, or any vehicle dealer who ~~((shall))~~ loans or permits the use of vehicle dealer license plates by any person not entitled to the use thereof, ~~((shall be))~~ is guilty of a gross misdemeanor.

**Sec. 10.** RCW 46.70.290 and 1971 ex.s. c 231 s 23 are each amended to read as follows:

The provisions of chapter 46.70 RCW shall apply to the distribution and sale of mobile homes and to mobile home dealers, ~~((salesmen,))~~ distributors, manufacturers, factory representatives, or other persons engaged in such distribution and sale to the same extent as for motor vehicles.

**Sec. 11.** RCW 46.70.300 and 1981 c 152 s 2 are each amended to read as follows:

(1) The provisions of this chapter relating to the licensing and regulation of vehicle dealers~~((, salesmen,))~~ and manufacturers shall be exclusive, and no county, city, or other political subdivision of this state shall enact any laws, rules, or regulations licensing or regulating vehicle dealers~~((, salesmen,))~~ or manufacturers.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon vehicle dealers or manufacturers maintaining an office within that political subdivision if a business and occupation tax is levied by such a political subdivision upon other types of businesses within its boundaries.

**Sec. 12.** RCW 46.87.020 and 1991 c 163 s 4 are each amended to read as follows:

Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP

and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include trailers, semitrailers, and pole trailers as applicable, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on

the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

(7) "Department" means the department of licensing.

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign ~~((county-[country]))~~ country, and a state or province of a foreign country.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months ~~((immediately prior to July 1st of the year immediately preceding the commencement of))~~ ending three months before the registration or license year for which proportional registration is sought.

(14) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

(15) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorated fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(16) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(17) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction. ~~((The "registration year" for Washington is the period from January 1st through December 31st of each calendar year.))~~

(18) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

(19) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement.

**Sec. 13.** RCW 46.87.030 and 1987 c 244 s 18 are each amended to read as follows:

(1) When application to register an apportionable or commercial vehicle is made after ~~((March 31st of a))~~ the third month of the owner's registration year, the Washington prorated fees may be reduced by one-twelfth for each full registration month that has elapsed at the time a temporary authorization permit (TAP) was issued or if no TAP was issued, at such time as an application for registration is received in the department. ~~((The filing of any application with the department incurs liability for the fees and taxes applicable to the vehicles contained in the application.))~~ If a vehicle is being added to a currently registered fleet, the prorated percentage previously established for the fleet for such registration year shall be used in the computation of the proportional fees and taxes due.

(2) If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under this chapter, the registrant of the fleet shall notify the department on appropriate forms prescribed by the department. The department may require the registrant to surrender credentials that were issued to the vehicle. If a motor vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet registrant, the unused portion

of the licensing fee paid under RCW 46.16.070 with respect to the vehicle reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first day of the month of the current registration year in which the vehicle was registered and the date the notice of withdrawal, accompanied by such credentials as may be required, is received in the department, shall be credited to the fleet proportional registration account of the registrant. Credit shall be applied against the licensing fee liability for subsequent additions of motor vehicles to be proportionally registered in the fleet during such registration year or for additional licensing fees due under RCW 46.16.070 or to be due upon audit under RCW 46.87.310. If any credit is less than fifteen dollars, no credit will be entered. In lieu of credit, the registrant may choose to transfer the unused portion of the licensing fee for the motor vehicle to the new owner, in which case it shall remain with the motor vehicle for which it was originally paid. In no event may any amount be credited against fees other than those for the registration year from which the credit was obtained nor is any amount subject to refund.

**Sec. 14.** RCW 46.87.080 and 1987 c 244 s 23 are each amended to read as follows:

(1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle and one such plate for each trailer, semitrailer, pole trailer, or converter gear listed on the application. License plates shall be displayed on vehicles as required by RCW 46.16.240. The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued. In the case of nonpowered vehicles, the cab card may be carried in or on the vehicle supplying the motive power instead of in or on the nonpowered vehicle.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and shall be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.



(4) ((A)) Distinctive validation tab(s) of a design, size, and color determined by the department shall be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered. Foreign-based vehicles proportionally registered in this state under the provisions of the Western Compact shall display the validation tab on a backing plate or as otherwise prescribed by the department.

(5) Renewals shall be effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority by the interstate commerce commission in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, 82.37, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, 82.37, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, 82.37, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16, 46.85, 46.87, 82.36, 82.37, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing.

**Sec. 15.** RCW 46.87.310 and 1987 c 244 s 44 are each amended to read as follows:

Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four years following the preceding year or period upon which the application is based. These records shall be complete and shall include, but not be limited to, the following: Copies of proportional registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of proportional or full registration with other jurisdictions; vehicle license or trip permits; temporary authorization permits; documents establishing the latest purchase year and cost of each fleet vehicle in ready-for-the-road condition; weight certificates indicating the unladen, ready-for-the-road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip that provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip. Upon request of the department, the owner shall make the records available to the department at its designated office for audit as to accuracy of records, computations, and payments. The department shall assess and collect any unpaid fees and taxes found to be due the state and provide credits or refunds for overpayments of Washington fees and taxes as determined in accordance with formulas and other requirements prescribed in this chapter. If the owner fails to maintain complete records as required by this section, the department shall attempt to reconstruct or reestablish such records. However, if the department is unable to do so and the missing or incomplete records involve mileages accrued by vehicles while they are part of the fleet, the department may assess an amount not to exceed the difference between the Washington proportional fees and taxes paid and one hundred percent of the fees and taxes. Further, if the owner fails to maintain complete records as required by this section, or if the department determines that the owner should have registered more vehicles in this state under this chapter, the department may deny the owner the right of any further benefits provided by this chapter until any final audit or assessment made under this chapter has been satisfied.

The department may audit the records of any owner and may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required. Any fees, taxes, penalties, or interest found to be due and owing the state upon audit shall bear interest at ~~((twelve percent per annum from the date on which the deficiency is incurred))~~ the rate of one percent per month,

or fraction thereof, from the first day of the calendar month after the amount should have been paid until the date of payment. If the audit discloses a deliberate and willful intent to evade the requirements of payment under RCW 46.87.140, a penalty of ten percent shall also be assessed.

If the audit discloses that an overpayment to the state in excess of five dollars has been made, the department shall certify the overpayment to the state treasurer who shall issue a warrant for the overpayment to the vehicle operator. Overpayments shall bear interest at the rate of eight percent per annum from the date on which the overpayment is incurred until the date of payment.

**Sec. 16.** RCW 46.87.340 and 1987 c 244 s 47 are each amended to read as follows:

If an owner of proportionally registered vehicles liable for the remittance of fees and taxes imposed by this chapter (~~for which an assessment has become final~~) fails to pay the fees and taxes, the amount thereof, including any interest, penalty, or addition to the fees and taxes together with any additional costs that may accrue, constitutes a lien in favor of the state upon all franchises, property, and rights to property, whether the property is employed by the person for personal or business use or is in the hands of a trustee, receiver, or assignee for the benefit of creditors, from the date the fees and taxes were due and payable until the amount of the lien is paid or the property is sold to pay the lien. The lien has priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that the lien is not valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached before the time the department has filed and recorded notice of the lien as provided in this chapter.

In order to avail itself of the lien created by this section, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent fees and taxes, penalties, and interest claimed by the department. From the time of filing for record, the amount required to be paid constitutes a lien upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state is of no effect, however, until the lien or a copy of it has been filed with the county auditor in the county where the property is located. When a lien is filed in compliance with this section and with the secretary of state, the filing has the same effect as if the lien had been duly filed for record in the office of each county auditor of this state.

**NEW SECTION.** **Sec. 17.** A new section is added to chapter 46.87 RCW to read as follows:

The department may extend or diminish vehicle license registration periods for the purpose of staggering renewal periods. The extension or diminishment of a vehicle license registration period must be by rule of the department. The

rule shall provide for the collection of proportionally increased or decreased vehicle license registration fees and of excise or other taxes required to be paid at the time of registration.

It is the intent of the legislature that there shall be neither a significant net gain nor loss of revenue to the state general fund or the motor vehicle fund as the result of implementing and maintaining a staggered vehicle registration system.

NEW SECTION. Sec. 18. RCW 46.12.120 and 46.12.140 are each recodified as sections in chapter 46.70 RCW.

NEW SECTION. Sec. 19. The following acts or parts of acts are each repealed:

- (1) RCW 46.70.150 and 1961 c 12 s 46.70.150; and
- (2) RCW 46.87.160 and 1987 c 244 s 29.

Passed the House March 8, 1993.

Passed the Senate April 22, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

**CHAPTER 308**

[House Bill 1384]

**SUBSTITUTE TEACHERS—SPOUSES OF DISTRICT OFFICERS**

**MAY BE EMPLOYED AS**

**Effective Date: 7/25/93**

AN ACT Relating to school district employment contracts; and amending RCW 42.23.030.

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

**Sec. 1.** RCW 42.23.030 and 1991 c 363 s 120 are each amended to read as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

- (1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;
- (2) The designation of public depositories for municipal funds;
- (3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality, other than a county with a population of one hundred twenty-five thousand or more, a city of the first or second class, an irrigation district encompassing in excess of fifty thousand acres, or a first class school district, for unskilled day labor at wages not exceeding one hundred dollars in any calendar month;

(6) The letting of any other contract (except a sale or lease as seller or lessor) by a municipality, other than a county with a population of one hundred twenty-five thousand or more, a city of the first or second class, an irrigation district encompassing in excess of fifty thousand acres, or a first class school district: PROVIDED, That the total volume of business represented by such contract or contracts in which a particular officer is interested, singly or in the aggregate, as measured by the dollar amount of the municipality's liability thereunder, shall not exceed seven hundred fifty dollars in any calendar month: PROVIDED FURTHER, That in the case of a particular officer of a third class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total volume of such contract or contracts authorized in this subsection may exceed seven hundred fifty dollars in any calendar month but shall not exceed nine thousand dollars in any calendar year: PROVIDED FURTHER, That there shall be public disclosure by having an available list of such purchases or contracts, and if the supplier or contractor is an official of the municipality, he or she shall not vote on the authorization;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers, who shall be appointed from members of the American institute of real estate appraisers by the presiding judge of the superior court in the county where the property is situated, shall find and the court finds that all terms and conditions of such lease are fair to the port district and are in the public interest;

(8) The letting of any contract for the driving of a school bus in a second class school district: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of any contract to the spouse of an officer of a second class school district in which less than two hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.150.040, when such contract is solely for employment as a certificated or classified employee of the school district, or the letting of any contract to the spouse of an officer of a ~~((second class)) school district ((in which less than five hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.150.040))~~, when such contract is solely for employment as a substitute

teacher for the school district: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district.

Passed the House March 8, 1993.  
Passed the Senate April 20, 1993.  
Approved by the Governor May 12, 1993.  
Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 309**

[Engrossed Substitute House Bill 1393]

**MINIMUM WAGE INCREASED**

**Effective Date: 1/1/94**

AN ACT Relating to periodic adjustments of the state minimum wage; amending RCW 49.46.020; and providing an effective date.

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

**Sec. 1.** RCW 49.46.020 and 1989 c 1 s 2 are each amended to read as follows:

(1) Every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than ~~((three dollars and eighty five cents per hour except as may be otherwise provided under this section. Beginning January 1, 1990, the state minimum wage shall be))~~ four dollars and ~~((twenty five))~~ ninety cents per hour.

(2) The director shall by regulation establish the minimum wage for employees under the age of eighteen years.

**NEW SECTION.** **Sec. 2.** This act shall take effect January 1, 1994.

Passed the House April 23, 1993.  
Passed the Senate April 16, 1993.  
Approved by the Governor May 12, 1993.  
Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 310

[House Bill 1401]

## TAX FORECLOSED PROPERTY—SALE THROUGH PRIVATE NEGOTIATION

Effective Date: 7/25/93

AN ACT Relating to the sale of tax foreclosed property; and amending RCW 84.64.270 and 84.64.320.

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

**Sec. 1.** RCW 84.64.270 and 1991 c 245 s 30 are each amended to read as follows:

Real property (~~heretofore or hereafter~~) acquired by any county of this state by foreclosure of delinquent taxes may be sold by order of the county legislative authority of the county when in the judgment of the (~~members of the~~) county legislative authority (~~they deem it for~~) it is deemed in the best interests of the county to sell the (~~same~~) real property.

When the legislative authority desires to sell any such property it may, if deemed advantageous to the county, combine any or all of the several lots and tracts of such property in one or more units, and may reserve from sale coal, oil, gas, gravel, minerals, ores, fossils, timber, or other resources on or in the lands, and the right to mine for and remove the same, and it shall then enter an order on its records fixing the unit or units in which the property shall be sold and the minimum price for each of such units, and whether the sale will be for cash or whether a contract will be offered, and reserving from sale such of the resources as it may determine and from which units such reservations shall apply, and directing the county treasurer to sell such property in the unit or units and at not less than the price or prices and subject to such reservations so fixed by the county legislative authority(~~— PROVIDED, That~~). The order shall be subject to the approval of the county treasurer if several lots or tracts of land are combined in one unit.

Except in cases where the sale is to be by direct negotiation as provided in this chapter, it shall be the duty of the county treasurer upon receipt of such order to publish once a week for three consecutive weeks a notice of the sale of such property in a newspaper of general circulation in the county where the land is situated. The notice shall describe the property to be sold, the unit or units, the reservations, and the minimum price fixed in the order, together with the time and place and terms of sale, in the same manner as foreclosure sales as provided by RCW 84.64.080.

The person making the bid shall state whether he or she will pay cash for the amount of his or her bid or accept a real estate contract of purchase in accordance with the provisions hereinafter contained. The person making the highest bid shall become the purchaser of the property. If the highest bidder is a contract bidder the purchaser shall be required to pay thirty percent of the total purchase price at the time of the sale and shall enter into a contract with the county as vendor and the purchaser as vendee which shall obligate and require the purchaser to pay the balance of the purchase price in ten equal annual

installments commencing November 1st and each year following the date of the sale, and shall require the purchaser to pay twelve percent interest on all deferred payments, interest to be paid at the time the annual installment is due; and may contain a provision authorizing the purchaser to make payment in full at any time of any balance due on the total purchase price plus accrued interest on such balance. The contract shall contain a provision requiring the purchaser to pay before delinquency all subsequent taxes and assessments that may be levied or assessed against the property subsequent to the date of the contract, and shall contain a provision that time is of the essence of the contract and that in event of a failure of the vendee to make payments at the time and in the manner required and to keep and perform the covenants and conditions therein required of him or her that the contract may be forfeited and terminated at the election of the vendor, and that in event of the election all sums theretofore paid by the vendee shall be forfeited as liquidated damages for failure to comply with the provisions of the contract; and shall require the vendor to execute and deliver to the vendee a deed of conveyance covering the property upon the payment in full of the purchase price, plus accrued interest(~~((-- PROVIDED FURTHER, That))~~).

The county legislative authority may, by order entered in its records, direct the coal, oil, gas, gravel, minerals, ores, timber, or other resources sold apart from the land, such sale to be conducted in the manner hereinabove prescribed for the sale of the land(~~((-- PROVIDED FURTHER, That))~~). Any such reserved minerals or resources not exceeding two hundred dollars in value may be sold, when the county legislative authority deems it advisable, either with or without such publication of the notice of sale, and in such manner as the county legislative authority may determine will be most beneficial to the county.

**Sec. 2.** RCW 84.64.320 and 1961 c 15 s 84.64.320 are each amended to read as follows:

The (~~board of county commissioners~~) county legislative authority may dispose of tax foreclosed property (~~to any governmental agency for public purposes~~) by private negotiation, without a call for bids, for not less than the principal amount of the unpaid taxes in any of the following cases: (1) When the sale is to any governmental agency and for public purposes; (2) when the county legislative authority determines that it is not practical to build on the property due to the physical characteristics of the property or legal restrictions on construction activities on the property; or (3) when no acceptable bids were received at the attempted public auction of the property, if the sale is made within six months from the date of the attempted public auction.

Passed the House March 8, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.



## CHAPTER 311

[Engrossed Substitute House Bill 1461]

TELECOMMUNICATIONS—MANDATORY LOCAL MEASURED  
SERVICE—PROHIBITION EXTENDED

Effective Date: 5/12/93

AN ACT Relating to extending the prohibition on mandatory local measured service; amending RCW 80.04.130; and declaring an emergency.

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

**Sec. 1.** RCW 80.04.130 and 1992 c 68 s 1 are each amended to read as follows:

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

For the purposes of this section, tariffs for the following telecommunications services, that temporarily waive or reduce charges for existing or new subscribers for a period not to exceed sixty days in order to promote the use of the services shall be considered tariffs that decrease rates, charges, rentals, or tolls:

- (a) Custom calling service;
- (b) Second access lines; or
- (c) Other services the commission specifies by rule.

The commission may suspend any promotional tariff other than those listed in (a) through (c) of this subsection.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing or approve, prior to June 1, (~~(+1993)~~) 1998, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 312

[Engrossed Substitute House Bill 1197]

## PUBLIC ASSISTANCE—INCENTIVES TO WORK OR COMPLETE SCHOOLING

**Effective Date:** Sections 2 & 11 take effect on 7/1/94, pending approval of funding; Sections 3, 4, & 5 take effect on 7/1/93, pending approval of funding

AN ACT Relating to public assistance; amending RCW 74.25.020; reenacting and amending RCW 74.04.005; adding new sections to chapter 74.04 RCW; adding a new section to chapter 74.12 RCW; adding a new chapter to Title 74 RCW; creating new sections; providing effective dates; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds that:

(1) Public assistance is intended to be a temporary financial relief program, recognizing that families can be confronted with a financial crisis at any time in life. Successful public assistance programs depend on the availability of adequate resources to assist individuals deemed eligible for the benefits of such a program. In this way, eligible families are given sufficient assistance to reenter productive employment in a minimal time period.[;]

(2) The current public assistance system requires a reduction in grant standards when income is received. In most cases, family income is limited to levels substantially below the standard of need. This is a strong disincentive to work. To remove this disincentive, the legislature intends to allow families to retain a greater percentage of income before it results in the reduction or termination of benefits;

(3) Employment, training, and education services provided to employable recipients of public assistance are effective tools in achieving economic self-sufficiency. Support services that are targeted to the specific needs of the individual offer the best hope of achieving economic self-sufficiency in a cost-effective manner;

(4) State welfare-to-work programs, which move individuals from dependence to economic independence, must be operated cooperatively and collaboratively between state agencies and programs. They also must include public assistance recipients as active partners in self-sufficiency planning activities. Participants in economic independence programs and services will benefit from the concepts of personal empowerment, self-motivation, and self-esteem;

(5) Many barriers to economic independence are found in federal statutes and rules, and provide states with limited options for restructuring existing programs in order to create incentives for employment over continued dependence;

(6) The legislature finds that the personal and societal costs of teenage childbearing are substantial. Teen parents are less likely to finish high school and more likely to depend upon public assistance than women who delay childbearing until adulthood; and

(7) The legislature intends that an effort be made to ensure that each teenage parent who is a public assistance recipient live in a setting that increases the likelihood that the teen parent will complete high school and achieve economic independence.

**NEW SECTION. Sec. 2.** For purposes of determining the amount of grant payments to recipients of aid to families with dependent children, all countable nonexempt earned income shall be subtracted from an amount equal to fifty-five percent of the need standard. The department shall adopt rules necessary to implement the intent of this section.

**NEW SECTION. Sec. 3.** The department shall amend the state plan to eliminate the one hundred hour work rule for recipients of aid to families with dependent children-employable. The department shall seek federal approval for the amendment to the state plan and report on federal action to the appropriate standing committees of the legislature by December 1, 1993.

**NEW SECTION. Sec. 4.** The department shall initiate a pilot project using electronic benefit transfer technology for the food stamp, aid to families with dependent children, and women, infant, and children programs. The department shall report to the appropriate standing committees of the legislature on the project implementation status by December 1, 1994.

**Sec. 5.** RCW 74.04.005 and 1992 c 165 s 1 and 1992 c 136 s 1 are each reenacted and amended to read as follows:

For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal aid to families with dependent children program: PROVIDED FURTHER, That during any period in which an aid for dependent children employable program is not in operation, only those pregnant women who are categorically eligible for medicaid are eligible for general assistance; (~~(F)~~)

(B) Under twenty years of age and ineligible for aid to families with dependent children solely due to federal age requirements, and are full-time students reasonably expected to complete a program of secondary school or the equivalent level of vocational or technical training before the end of the month in which the person reaches age twenty. Reasonably expected to complete a program of secondary school or the equivalent level of vocational or technical training means maintaining a grade point average equal to or greater than a 2.5. For purposes of determining payment amount, the student is considered a member of the aid to families with dependent children household of which the student would be a member but for the federal age requirement. In determining eligibility, earnings of a full-time student shall be disregarded, in accordance with department standards, notwithstanding the earnings limitation imposed by RCW 74.04.266;

(C) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department(~~(-)~~); or

(~~(E)~~) (D) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. Subsection (6)(a)(ii)(~~(B)~~)(C) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) ~~(To the extent authorized by the legislature in the biennial appropriations act, to)~~ Recipients of aid to families with dependent children whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received. Payment shall be made within fifteen days of the request.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eligible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance

based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal aid to families with dependent children program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal aid to families with dependent children program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(h) Students with earnings shall not be eligible for the essential persons program unless the earnings are disregarded.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: PROVIDED, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such property for residential purposes, either for himself or his dependents, the property shall be considered as a resource which can be made available to meet need, and if the recipient or his dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons or a natural disaster, shall raise a rebuttable presumption of abandonment: PROVIDED, That if in the opinion of three physicians the recipient will be unable to return to the home during his lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed one thousand five hundred dollars.

(d) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be

consistent with limitations on resources and exemptions necessary for federal aid assistance.

(e) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the aid to families with dependent children program rules adopted by the department.

(f) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him to decrease his need for public assistance or to aid in rehabilitating him or his dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In determining the amount of assistance to which an applicant or recipient of aid to families with dependent children is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs even though the total exceeds the exemptions or resources granted to applicants and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this



chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. All resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself and the dependent members of his family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary.

***\*NEW SECTION.*** *Sec. 6. A new section is added to chapter 74.04 RCW to read as follows:*

*The department shall amend the state plan to include an aid to families with dependent children essential persons program that would, to the extent permitted under federal law, allow eighteen to twenty year old students to be eligible for federal aid to families with dependent children matching grants.*

*\*Sec. 6 was vetoed, see message at end of chapter.*

**Sec. 7.** RCW 74.25.020 and 1992 c 165 s 3 are each amended to read as follows:

(1) The department of social and health services is authorized to contract with public and private employment and training agencies and other public service entities to provide services prescribed or allowed under the federal social security act, as amended, to carry out the purposes of the jobs training program. The department of social and health services has sole authority and responsibility to carry out the job opportunities and basic skills training program. No contracting entity shall have the authority to review, change, or disapprove any administrative decision, or otherwise substitute its judgment for that of the department of social and health services as to the application of policies and rules adopted by the department of social and health services.

(2) To the extent feasible under federal law, the department of social and health services and all entities contracting with it shall give first priority of service to individuals volunteering for program participation(~~(= PROVIDED, That the department shall require nonexempt parents under age twenty-four to actively participate in orientation, assessment, and either education, vocational training, or employment programs. At least one nonexempt parent in the aid to families with dependent children employable program shall actively participate in orientation, assessment, and either job search, education, training, or employment. Social services shall be offered to participants in accordance with federal law. The department shall adopt appropriate sanctions to ensure compliance with the requirements and policies of this chapter))~~).

(3) The department of social and health services shall adopt rules under chapter 34.05 RCW establishing criteria constituting circumstances of good cause for an individual failing or refusing to participate in an assigned program component, or failing or refusing to accept or retain employment. These criteria shall include, but not be limited to, the following circumstances: (a) If the individual is a parent or other relative personally providing care for a child under age six years, and the employment would require the individual to work more than twenty hours per week; (b) if child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department of social and health services fails to provide such care; (c) the employment would result in the family of the participant experiencing a net loss of cash income; or (d) circumstances that are beyond the control of the individual's household, either on a short-term or on an ongoing basis.

(4) The department of social and health services shall adopt rules under chapter 34.05 RCW as necessary to effectuate the intent and purpose of this chapter.

**NEW SECTION. Sec. 8.** The department may provide grants to community action agencies or other local nonprofit organizations to provide job opportunities and basic skills training program participants with transitional support services, one-to-one assistance, and job retention services.

**NEW SECTION. Sec. 9.** The department of social and health services shall design a program for implementation involving recipients of aid to families with dependent children. A goal of this program is to develop a system that segments the aid to families with dependent children recipient population and identifies subgroups, matches services to the needs of the subgroup, and prioritizes available services. The department shall specify the services to be offered in each population segment. The general focus of the services offered shall be on job training, work force preparedness, and job retention.

The program shall be designed for state-wide implementation on July 1, 1994. A proposal for implementation may include phasing certain components

over time or geographic area. The department shall submit this program to the appropriate committees of the senate and house of representatives by December 1, 1993.

**NEW SECTION.** Sec. 10. A new section is added to chapter 74.12 RCW to read as follows:

(1) As part of the orientation and assessment conducted pursuant to RCW 74.25.020, the department shall assist the family of the recipient in determining, in the following order of priority, the most appropriate living situation that will best ensure the safety and well-being for each recipient of aid to families with dependent children who is receiving those benefits as a head of household and is under age eighteen. Appropriate living situations may include, but are not limited to:

- (a) The parent's home;
- (b) The home of a relative;
- (c) A group living situation with adult supervision and guidance;
- (d) Living independently; and
- (e) Payment of the recipient's grant to another as provided in RCW 74.12.250.

(2) In conducting the assessment, the department shall consider all relevant factors, including but not limited to:

- (a) Whether the recipient is enrolled in and attending school;
- (b) Whether the recipient is employed;
- (c) The situation in the home of the recipient's parents, including but not limited to, whether there is substance abuse or domestic violence in the home and the adequacy of the dwelling; and
- (d) Whether there is a history of physical, emotional, or sexual abuse of the recipient by a person living in or frequenting the recipient's parents' home.

(3) If, as a result of the assessment, the department becomes aware of a recipient's need for other services that will help the recipient complete high school or achieve economic independence, and be an effective parent, the department shall make every effort to link the recipient with the services, including parenting classes.

**NEW SECTION.** Sec. 11. A new section is added to chapter 74.04 RCW to read as follows:

In determining food stamp eligibility, the department shall exclude as income the child support exempted by 42 U.S.C. Sec. 602(a)(8)(vi) or 657(b).

**NEW SECTION.** Sec. 12. By October 1, 1993, the department shall request the governor to seek congressional and federal agency action on any federal legislation or federal regulation that may be necessary to implement chapter 74.— RCW (sections 2 through 4, 8, and 12 of this act), and any other section of chapter . . . , Laws of 1993 (this act) that may require a federal waiver.

**NEW SECTION.** Sec. 13. Sections 2 through 4, 8, and 12 of this act shall constitute a new chapter in Title 74 RCW.

NEW SECTION. **Sec. 14.** Section 2 of this act shall take effect July 1, 1994, if specific funding for the purposes of section 2 of this act, referencing section 2 of this act by bill and section number, is provided by July 1, 1994, in the omnibus appropriations act. If specific funding is not so provided, section 2 of this act shall be null and void.

NEW SECTION. **Sec. 15.** Section 3 of this act shall take effect July 1, 1993, if specific funding for the purposes of section 3 of this act, referencing section 3 of this act by bill and section number, is provided by July 1, 1993, in the omnibus appropriations act. If specific funding is not so provided, section 3 of this act shall be null and void.

NEW SECTION. **Sec. 16.** Section 4 of this act shall take effect July 1, 1993, if specific funding for the purposes of section 4 of this act, referencing section 4 of this act by bill and section number, is provided by July 1, 1993, in the omnibus appropriations act. If specific funding is not so provided, section 4 of this act shall be null and void.

NEW SECTION. **Sec. 17.** Section 5 of this act shall take effect July 1, 1993, if specific funding for the purposes of section 5 of this act, referencing section 5 of this act by bill and section number, is provided by July 1, 1993, in the omnibus appropriations act. If specific funding is not so provided, section 5 of this act shall be null and void.

NEW SECTION. **Sec. 18.** Section 11 of this act shall take effect July 1, 1994, if specific funding for the purposes of section 11 of this act, referencing section 11 of this act by bill and section number, is provided by July 1, 1994, in the omnibus appropriations act. If specific funding is not so provided, section 11 of this act shall be null and void.

NEW SECTION. **Sec. 19.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions.

Passed the House April 24, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 12, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 12, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval to section 6, Engrossed Substitute House Bill No. 1197 entitled:

"AN ACT Relating to public assistance."

Engrossed Substitute House Bill 1197 includes a number of progressive measures aimed at helping families on public assistance become independent by removing work disincentives and encouraging young people to complete their schooling.

Section 6 of the bill would establish an "essential persons" program for full-time students between the ages of 18 and 20 within the Aid to Families with Dependent Children program. This would allow these individuals to be included as part of the

family unit for purposes of calculating benefits, providing an incentive for young people to complete high school or go on to enroll in college or vocational school.

I applaud the direction the Legislature has taken in recognizing the importance of education in our effort to break the cycle of poverty. However, the operating budget bill passed by the Legislature does not include funding to implement this program. I do not believe that the Legislature intended that this bill result in expenditures in the 1993-95 biennium except those specifically authorized and funded in the budget. I believe that the veto of section 6 is necessary to reflect the Legislature's actual intent in enacting this bill.

For these reasons, I have vetoed Section 6 of Engrossed Substitute House Bill No. 1197.

With the exception of Section 6, Engrossed Substitute House Bill No. 1197 is approved."

## CHAPTER 313

[Engrossed Substitute House Bill 1500]

### BOARD ON FITTING AND DISPENSING OF HEARING AIDS—REVISED REGULATORY PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to hearing aids; amending RCW 18.35.010, 18.35.050, 18.35.060, 18.35.110, 18.35.140, 18.35.150, 18.35.161, 18.35.170, 18.35.185, 18.35.220, and 18.35.240; and adding a new section to chapter 18.35 RCW.

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

**Sec. 1.** RCW 18.35.010 and 1991 c 3 s 80 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Department" means the department of health.
- (2) "~~(Council)~~ Board" means the ~~(council)~~ board on fitting and dispensing of hearing aids.
- (3) "Hearing aid" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords and ear molds.
- (4) "Fitting and dispensing of hearing aids" means the sale, lease, or rental or attempted sale, lease, or rental of hearing aids together with the selection and adaptation of hearing aids and the use of those tests and procedures essential to the performance of these functions. It includes the taking of impressions for ear molds for these purposes.
- (5) "Secretary" means the secretary of health.
- (6) "Establishment" means any facility engaged in the fitting and dispensing of hearing aids.

**Sec. 2.** RCW 18.35.050 and 1989 c 198 s 3 are each amended to read as follows:

Except as otherwise provided in this chapter an applicant for license shall appear at a time and place and before such persons as the department may designate to be examined by written and practical tests. The department shall give an examination in May and November of each year. The examination shall be reviewed annually by the ~~((council))~~ board and the department, and revised as necessary. No examination of any established association may be used as the exclusive replacement for the examination unless approved ~~((and developed))~~ by the ~~((council))~~ board.

**Sec. 3.** RCW 18.35.060 and 1991 c 3 s 82 are each amended to read as follows:

(1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that:

(a) The applicant is at least eighteen years of age;

(b) If issued a trainee license, would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed in good standing as a fitter-dispenser for at least one year unless otherwise approved by the ~~((council))~~ board; and

(c) Has paid an application fee determined by the secretary as provided in RCW 43.70.250, to the department.

The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and that person shall execute an acknowledgment of responsibility for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if the trainee is under the direct supervision of a person licensed under this chapter in a capacity other than as a trainee. Direct supervision by a licensed fitter-dispenser shall be required whenever the trainee is engaged in the fitting or dispensing of hearing aids during the trainee's first three months of full-time employment. The ~~((council))~~ board shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(4) The trainee license shall expire one year from the date of its issuance except that on recommendation of the ~~((council))~~ board the license may be reissued for one additional year only.

(5) No person licensed under this chapter may assume the responsibility for more than two trainees at any one time, except that the department may approve one additional trainee if none of the trainees is within the initial ninety-day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees.

**Sec. 4.** RCW 18.35.110 and 1987 c. 150 s 22 are each amended to read as follows:

In addition to causes specified under RCW 18.130.170 and 18.130.180, any person licensed under this chapter may be subject to disciplinary action by the ((council)) board for any of the following causes:

(1) For unethical conduct in dealing in hearing aids. Unethical conduct shall include, but not be limited to:

(a) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading or deceptive;

(b) Failing or refusing to honor or to perform as represented any representation, promise, agreement, or warranty in connection with the promotion, sale, dispensing, or fitting of the hearing aid;

(c) Advertising a particular model, type, or kind of hearing aid for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;

(d) Falsifying hearing test or evaluation results;

(e)(i) Whenever any of the following conditions are found or should have been found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user prior to fitting and dispensing a hearing aid to any such prospective hearing aid user, failing to advise that prospective hearing aid user in writing that the user should first consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to any duly licensed physician:

(A) Visible congenital or traumatic deformity of the ear, including perforation of the eardrum;

(B) History of, or active drainage from the ear within the previous ninety days;

(C) History of sudden or rapidly progressive hearing loss within the previous ninety days;

(D) Acute or chronic dizziness;

(E) Any unilateral hearing loss;

(F) Significant air-bone gap when generally acceptable standards have been established as defined by the food and drug administration;

(G) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal;

(H) Pain or discomfort in the ear; or

(I) Any other conditions that the ((department)) board may by rule establish. It is a violation of this subsection for any licensee or that licensee's employees and putative agents upon making such required referral for medical opinion to

in any manner whatsoever disparage or discourage a prospective hearing aid user from seeking such medical opinion prior to the fitting and dispensing of a hearing aid. No such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within six months of the date of purchase. The licensee or the licensee's employees or putative agents shall obtain a signed statement from the hearing aid user documenting the waiver of medical clearance and the waiver shall inform the prospective user that signing the waiver is not in the user's best health interest: PROVIDED, That the licensee shall maintain a copy of either the physician's statement showing that the prospective hearing aid user has had a medical evaluation or the statement waiving medical evaluation, for a period of three years after the purchaser's receipt of a hearing aid. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited under the laws of this state;

(ii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined and cleared for hearing aid use within the previous six months by a physician specializing in otolaryngology except in the case of replacement instruments or except in the case of the parents or guardian of such person refusing, for good cause, to seek medical opinion: PROVIDED, That should the parents or guardian of such person refuse, for good cause, to seek medical opinion, the licensee shall obtain from such parents or guardian a certificate to that effect in a form as prescribed by the department;

(iii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined by an audiologist who holds at least a master's degree in audiology for recommendations during the previous six months, without first advising such person or his or her parents or guardian in writing that he or she should first consult an audiologist who holds at least a master's degree in audiology, except in cases of hearing aids replaced within six months of their purchase;

(f) Representing that the services or advice of a person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW or of a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the word "doctor," "clinic," or other like words, abbreviations, or symbols which tend to connote a medical or osteopathic profession when such use is not accurate;

(g) Permitting another to use his or her license;

(h) Stating or implying that the use of any hearing aid will restore normal hearing, preserve hearing, prevent or retard progression of a hearing impairment, or any other false, misleading, or medically or audilogically unsupportable claim regarding the efficiency of a hearing aid;



(i) Representing or implying that a hearing aid is or will be "custom-made," "made to order," "prescription made," or in any other sense specially fabricated for an individual when that is not the case; or

(j) Directly or indirectly offering, giving, permitting, or causing to be given, money or anything of value to any person who advised another in a professional capacity as an inducement to influence that person, or to have that person influence others to purchase or contract to purchase any product sold or offered for sale by the licensee, or to influence any person to refrain from dealing in the products of competitors.

(2) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020 (~~as now or hereafter amended~~).

(3) Aiding or abetting any violation of the rebating laws as stated in chapter 19.68 RCW.

**Sec. 5.** RCW 18.35.140 and 1983 c 39 s 11 are each amended to read as follows:

The powers and duties of the department, in addition to the powers and duties provided under other sections of this chapter, are as follows:

(1) (~~To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license.~~) To provide facilities necessary to carry out the examination of applicants for license.

(2) To authorize all disbursements necessary to carry out the provisions of this chapter.

(3) To require the periodic examination of the audiometric testing equipment and to carry out the periodic inspection of facilities of persons who deal in hearing aids, as reasonably required within the discretion of the department.

**Sec. 6.** RCW 18.35.150 and 1989 c 198 s 7 are each amended to read as follows:

(1) There is created hereby the (~~council~~) board on fitting and dispensing of hearing aids. The (~~council~~) board shall consist of (~~nine~~) seven members to be appointed by the governor.

(2) Members of the (~~council~~) board shall be residents of this state. (~~Five~~) Two members shall represent the public. Two members shall be persons experienced in the fitting of hearing aids who shall hold valid licenses under this chapter and who do not have a masters level college degree in audiology. One advisory nonvoting member shall be a medical (~~doctor~~) or osteopathic physician specializing in diseases of the ear. (~~One member shall be a nondispensing audiologist. Two members shall represent the public.~~) Two members must be experienced in the fitting of hearing aids, must be licensed under this chapter, and shall have received at a minimum a masters level college degree in audiology.

(3) The term of office of a member is three years. No member shall be appointed to serve more than two consecutive terms. A member shall continue

to serve until a successor has been appointed. The governor shall either reappoint the member or appoint a successor to assume the member's duties at the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The ~~((chairman))~~ chair of the ~~((council))~~ board shall be elected from the membership of the ~~((council))~~ board at the beginning of each year. In event of a tie, the issue shall be brought to a second vote and the chair shall refrain from voting.

(5) The ~~((council))~~ board shall meet at least once each year, at a place, day and hour determined by the ~~((council))~~ board, unless otherwise directed by a majority of ~~((council))~~ board members. The ~~((council))~~ board shall also meet at such other times and places as are requested by the department or by three members of the ~~((council))~~ board.

(6) Members of the ~~((council))~~ board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

**Sec. 7.** RCW 18.35.161 and 1987 c 150 s 23 are each amended to read as follows:

The ~~((council))~~ board shall have the following powers and duties:

(1) To establish by rule such minimum standards and procedures in the fitting and dispensing of hearing aids as deemed appropriate and in the public interest;

(2) To develop guidelines on the training and supervision of trainees;

(3) To adopt any other rules ~~((or regulations))~~ necessary to implement this chapter and which are not inconsistent with it;

(4) To develop, approve, and administer all licensing examinations required by this chapter; and

(5) To require a licensee to make restitution to any individual injured by a violation of this chapter or chapter 18.130 RCW, the uniform disciplinary act. The authority to require restitution does not limit the ~~((council's))~~ board's authority to take other action deemed appropriate and provided for in this chapter or chapter 18.130 RCW.

**Sec. 8.** RCW 18.35.170 and 1973 1st ex.s. c 106 s 17 are each amended to read as follows:

A member of the ~~((council))~~ board on fitting and dispensing of hearing aids shall not be permitted to take the examination provided under this chapter unless he or she has first satisfied the department that adequate precautions have been taken to assure that he or she does not and will not have any knowledge, not available to the members of the public at large, as to the contents of the examination.

**Sec. 9.** RCW 18.35.185 and 1989 c 198 s 12 are each amended to read as follows:

(1) In addition to any other rights and remedies a purchaser may have, the purchaser of a hearing aid shall have the right to rescind the transaction for other than the ~~((seller's))~~ licensee's breach if:

(a) The purchaser, for reasonable cause, returns the hearing aid or holds it at the ~~((seller's))~~ licensee's disposal, if the hearing aid is in its original condition less normal wear and tear. "Reasonable cause" shall be defined by the ~~((council))~~ board but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser about wearing a hearing aid; and

(b) The purchaser sends notice of the cancellation ~~((to the licensee at the licensee's place of business))~~ by certified mail, return receipt requested, to the establishment employing the licensee at the time the hearing aid was originally purchased, and the notice is posted not later than thirty days following the date of delivery, but the purchaser and the ~~((seller))~~ licensee may extend the deadline for posting of the notice of rescission by mutual, written agreement. In the event the hearing aid is in the possession of the ~~((seller))~~ licensee or the ~~((seller's))~~ licensee's representative during the thirty days following the date of delivery, the deadline for posting the notice of rescission shall be extended by an equal number of days that the aid is in the possession of the ~~((seller))~~ licensee or the ~~((seller's))~~ licensee's representative. Where the hearing aid is returned to the ~~((seller))~~ licensee for any inspection for modification or repair, and the ~~((seller))~~ licensee has notified the purchaser that the hearing aid is available for redelivery, and where the purchaser has not responded by either taking possession of the hearing aid or instructing the ~~((seller))~~ licensee to forward it to the purchaser, then the deadline for giving notice of the rescission shall begin seven working days after this notice.

(2) If the transaction is rescinded under this section or as otherwise provided by law and the hearing aid is returned to the licensee, the licensee shall refund to the purchaser any payments or deposits for that hearing aid. However, the licensee may retain, for each hearing aid, fifteen percent of the total purchase price or one hundred dollars, whichever is less. The licensee shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensee in making those goods ready for resale. The refund shall be made within ten days after the rescission. The buyer shall incur no additional liability for such rescission.

(3) For the purposes of this section, the purchaser shall have recourse against the bond held by the establishment entering into a purchase agreement with the buyer, as provided by RCW 18.35.240.

**Sec. 10.** RCW 18.35.220 and 1987 c 150 s 25 are each amended to read as follows:

(1) If the ~~((council))~~ board determines following notice and hearing, or following notice if no hearing was timely requested, that a person has:

- (a) Violated any provisions of this chapter or chapter 18.130 RCW; or
- (b) Violated any lawful order, or rule of the ~~((council))~~ board

an order may be issued by the ~~((council))~~ board requiring the person to cease and desist from the unlawful practice. The ~~((council))~~ board shall then take affirmative action as is necessary to carry out the purposes of this chapter.

(2) If the ~~((council))~~ board makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, a temporary cease and desist order may be issued. Prior to issuing a temporary cease and desist order, the ~~((council))~~ board, whenever possible, shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person to whom the order would be directed. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether the order becomes permanent.

(3) The department, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, or rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The department shall not be required to post a bond in any court proceedings.

**Sec. 11.** RCW 18.35.240 and 1991 c 3 s 85 are each amended to read as follows:

(1) Every establishment engaged in the fitting and dispensing of hearing aids shall file with the department a surety bond in the sum of ten thousand dollars, running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the establishment's employees or agents of any of the provisions of this chapter or rules adopted by the secretary.

(2) In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit is filed, the department shall deposit the funds with the state treasurer. The cash or other negotiable security deposited with the department shall be returned to the depositor one year after the establishment has discontinued the fitting and dispensing of hearing aids if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold or has discontinued the fitting and dispensing of hearing aids in order that the cash deposit or other security may be released at the end of one year from that date.

(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall

immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.

(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(7) Each invoice for the purchase of a hearing aid provided to a customer must clearly display on the first page the bond number of the establishment or the licensee selling the hearing aid.

NEW SECTION. Sec. 12. A new section is added to chapter 18.35 RCW to read as follows:

(1) A person licensed under this chapter and not actively fitting and dispensing hearing aids may be placed on inactive status by the department at the written request of the licensee. The board shall define by rule the conditions for inactive status licensure. In addition to the requirements of RCW 43.24.086, the licensing fee for a licensee on inactive status shall be directly related to the costs of administering an inactive license by the department. A person on inactive status may be voluntarily placed on active status by notifying the department in writing, paying the remainder of the licensing fee for the licensing year, and complying with subsection (2) of this section.

(2) Inactive licensees applying for active licensure shall comply with the following: A licensee who has not fitted or dispensed hearing aids for more than five years from the expiration of the licensee's full fee license shall retake the practical examinations required under this chapter and shall have completed continuing education requirements within the previous twelve-month period. Persons who have been on inactive status from two to five years must have within the previous twelve months completed continuing education requirements. Persons who have been on inactive status for one year or less shall upon application be reinstated as active licensees. Persons who have inactive status in this state but who are actively licensed and in good standing in any other state shall not be required to meet continuing education requirements or to take the practical examinations, but must submit an affidavit attesting to their knowledge of the current Washington Administrative Code rules and Revised Code of Washington statutes pertaining to the fitting and dispensing of hearing aids.

Passed the House April 20, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

**CHAPTER 314**

[Substitute House Bill 1507]

**ABANDONED VEHICLES—LIABILITY FOR COSTS OF REMOVAL AND DISPOSAL**

**Effective Date: 7/25/93**

AN ACT Relating to abandoned, unauthorized, or junk vehicles; adding a new section to chapter 46.55 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 46.55 RCW to read as follows:

(1) The abandonment of any vehicle creates a prima facie presumption that the last registered owner of record is responsible for the abandonment and is liable for costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

(2) If an unauthorized vehicle is found abandoned under subsection (1) of this section, the last registered owner of record is guilty of a traffic infraction under chapter 46.63 RCW, unless the vehicle is redeemed after impound as provided in RCW 46.55.120. In addition to the monetary penalty payable under that chapter, the person found to have committed the infraction is also liable for restitution in the amount of the deficiency remaining after disposal of the vehicle under RCW 46.55.140.

(3) Filing a report of sale or transfer regarding the vehicle involved in accordance with RCW 46.12.101(1) or a vehicle theft report filed with a law enforcement agency relieves the last registered owner of liability under subsections (1) and (2) of this section.

(4) For the purposes of RCW 46.63.070(5)(b), a traffic infraction under subsection (2) of this section is a moving violation and is not considered to be a standing, stopping, or parking violation.

Passed the House April 20, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

**CHAPTER 315**

[House Bill 1521]

**STATE AUDITOR—MUNICIPAL CORPORATION DIVISION FUNDING**

**Effective Date: 7/1/93**

AN ACT Relating to funding for the state auditor's office; amending RCW 43.09.230; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 43.09.270 and 1991 sp.s. c 16 s 920 are each amended to read as follows:

The expense of maintaining and operating the division (~~(shall be paid out of the state general fund: PROVIDED, That)~~) of municipal corporations and those expenses directly related to the prescribing of accounting systems, training, maintenance of working capital including reserves for late and uncollectable accounts and necessary adjustments to billings, and field audit supervision, shall be considered as expenses of auditing public accounts within the meaning of RCW 43.09.280 and 43.09.282, and shall be prorated for that purpose equally among all entities directly affected by such service.

~~((During the fiscal biennium ending June 30, 1993, the expense of maintaining and operating the division of municipal corporations shall be paid from the municipal revolving fund under RCW 43.09.282.))~~

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 316

[Engrossed Substitute House Bill 1529]

### TIMBER RECOVERY PROGRAMS—REAUTHORIZATION

**Effective Date:** 6/30/93 - Except Section 10 which becomes effective on 5/12/93

AN ACT Relating to the reauthorization of timber programs under chapters 314 and 315, Laws of 1991; amending RCW 43.31.611, 43.31.621, 43.31.631, 43.160.200, and 50.22.090; amending 1991 c 314 s 26 (uncodified); amending 1991 c 314 s 32 (uncodified); amending 1991 c 314 s 33 (uncodified); amending 1991 c 314 s 34 (uncodified); amending 1991 c 315 s 2 (uncodified); providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 43.31.611 and 1991 c 314 s 3 are each amended to read as follows:

(1) The governor shall appoint a timber recovery coordinator. The coordinator shall coordinate the state and federal economic and social programs targeted to timber impact areas.

(2) The coordinator's responsibilities shall include but not be limited to:

(a) Serving as executive secretary of the economic recovery coordination board and directing staff associated with the board.

(b) Chairing the agency timber task force and directing staff associated with the task force.

(c) Coordinating and maximizing the impact of state and federal assistance to timber impact areas.

(d) Coordinating and expediting programs to assist timber impact areas.

(e) Providing the legislature with a status and impact report on the timber recovery program in January 1992.

(3) This section shall expire June 30, ~~((1993))~~ 1995.

**Sec. 2.** RCW 43.31.621 and 1991 c 314 s 4 are each amended to read as follows:

(1) There is established the agency timber task force. The task force shall be chaired by the timber recovery coordinator. It shall be the responsibility of the coordinator that all directives of chapter 314, Laws of 1991 are carried out expeditiously by the agencies represented in the task force. The task force shall consist of the directors, or representatives of the directors, of the following agencies: The department of trade and economic development, department of community development, employment security department, department of social and health services, state board for community and technical colleges (~~education~~), state (~~board for vocational education~~) work force training and education coordinating board, or its replacement entity, department of natural resources, department of transportation, state energy office, department of wildlife, University of Washington center for international trade in forest products, and department of ecology. The task force may consult and enlist the assistance of the following: The higher education coordinating board, University of Washington college of forest resources, Washington State University school of forestry, Northwest policy center, state superintendent of public instruction, the Evergreen partnership, Washington association of counties, and rural development council.

(2) This section shall expire June 30, ~~((1993))~~ 1995.

**Sec. 3.** RCW 43.31.631 and 1991 c 314 s 6 are each amended to read as follows:

(1) There is established the economic recovery (1) coordination board consisting of one representative, appointed by the governor, from each county that is a timber impact area. The timber recovery coordinator shall also be a member of the board. Each associate development organization from counties that are timber impact areas, in consultation with the county legislative authority, shall submit to the governor the names of three nominees representing different interests in each county. Within sixty days after July 28, 1991, the governor shall select one nominee from each list submitted by associate development organizations. In making the appointments, the governor shall endeavor to ensure that the board represents a diversity of backgrounds. Vacancies shall be filled in the same manner as the original appointment.

(2) The board shall:

(a) Advise the timber recovery coordinator and the agency timber task force on issues relating to timber impact area economic and social development, and review and provide recommendations on proposals for the diversification of the timber impact areas presented to it by the timber recovery coordinator.

(b) Respond to the needs and concerns of citizens at the local level.



- (c) Develop strategies for the economic recovery of timber impact areas.
- (d) Provide recommendations to the governor, the legislature, and congress on land management and economic and regulatory policies that affect timber impact areas.
- (e) Recommend to the legislature any changes or improvements in existing programs designed to benefit timber impact areas.
- (3) Members of the board and committees shall receive no compensation but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.
- (4) This section shall expire June 30, (~~(+993)~~) 1995.

**Sec. 4.** RCW 43.160.200 and 1991 c 314 s 23 are each amended to read as follows:

(1) The economic development account is created within the public facilities construction loan revolving fund under RCW 43.160.080. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 43.160.010(4) and this section. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) Applications under this section for assistance from the economic development account are subject to all of the applicable criteria set forth under this chapter, as well as procedures and criteria established by the board, except as otherwise provided.

(3) Eligible applicants under this section are limited to political subdivisions of the state in timber impact areas that demonstrate, to the satisfaction of the board, the local economy's dependence on the forest products industry.

(4) Applicants must demonstrate that their request is part of an economic development plan consistent with applicable state planning requirements. Applicants must demonstrate that tourism projects have been approved by the local government and are part of a regional tourism plan approved by the local and regional tourism organizations. Industrial projects must be approved by the local government and the associate development organization.

(5) Publicly owned projects may be financed under this section upon proof by the applicant that the public project is a necessary component of, or constitutes in whole, a tourism project.

(6) Applications must demonstrate local match and participation. Such match may include: Land donation, other public or private funds or both, or other means of local commitment to the project.

(7) Board financing for feasibility studies shall not exceed twenty-five thousand dollars per study. Board funds for feasibility studies may be provided as a grant and require a dollar for dollar match with up to one-half in-kind match allowed.

(8) Board financing for tourism projects shall not exceed two hundred fifty thousand dollars. Other public facility projects under this section shall not exceed five hundred thousand dollars. Loans with flexible terms and conditions to meet the needs of the applicants shall be provided. Grants may also be

authorized, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

(9) The board shall develop guidelines for allowable local match and feasibility studies.

(10) Applications under this section need not demonstrate evidence that specific private development or expansion is ready to occur or will occur if funds are provided.

(11) The board shall establish guidelines for making grants and loans under this section to ensure that the requirements of this chapter are complied with. The guidelines shall include:

(a) A process to equitably compare and evaluate applications from competing communities.

(b) Criteria to ensure that approved projects will have a high probability of success and are likely to provide long-term economic benefits to the community. The criteria shall include: (i) A minimum amount of local participation, determined by the board per application, to verify community support for the project; (ii) an analysis that establishes the project is feasible using standard economic principles; and (iii) an explanation from the applicant regarding how the project is consistent with the communities' economic strategy and goals.

(c) A method of evaluating the impact of the loans or grants on the economy of the community and whether the loans or grants achieved their purpose.

(12) Cities and counties otherwise eligible under and in compliance with this section are authorized to use the loans or grants for buildings and structures.

**Sec. 5.** 1991 c 314 s 26 (uncodified) is amended to read as follows:

(1) For the period beginning July 1, 1991, and ending June 30, ~~((1993))~~ 1995, in timber impact areas the public works board may award low-interest or interest-free loans to local governments for construction of new public works facilities that stimulate economic growth or diversification.

(2) For the purposes of this section and section 27 of this act:

(a) "Public facilities" means bridge, road and street, domestic water, sanitary sewer, and storm sewer systems.

(b) "Timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average.

(3) The loans may have a deferred payment of up to five years but shall be repaid within twenty years. The public works board may require other terms and

conditions and may charge such rates of interest on its loans as it deems appropriate to carry out the purposes of this section. Repayments shall be made to the public works assistance account.

(4) The board may make such loans irrespective of the annual loan cycle and reporting required in RCW 43.155.070.

**Sec. 6.** 1991 c 314 s 32 (uncodified) is amended to read as follows:

RCW 43.160.076 and 1991 c 314 s 24 and 1985 c 446 s 6 are each repealed effective June 30, (~~(1993)~~) 1995.

**Sec. 7.** 1991 c 314 s 33 (uncodified) is amended to read as follows:

RCW 43.160.200 expires June 30, (~~(1993)~~) 1995.

**Sec. 8.** 1991 c 314 s 34 (uncodified) is amended to read as follows:

(~~Section 25 of this act~~) RCW 43.160.210 shall take effect July 1, (~~(1993)~~) 1995.

**Sec. 9.** 1991 c 315 s 2 (uncodified) is amended to read as follows:

(1) Coordination of the programs in this act shall be through the economic recovery coordination board created in RCW 43.31.631, the timber recovery coordinator created in RCW 43.31.611, and the agency timber task force created in RCW 43.31.621.

(2) This section shall expire June 30, (~~(1993)~~) 1995.

**Sec. 10.** RCW 50.22.090 and 1992 c 47 s 2 are each amended to read as follows:

(1) An additional benefit period is established for counties identified under subsection (2) of this section beginning on the first Sunday after July 1, 1991, and for the forest products industry beginning with the third week after the first Sunday after July 1, 1991. Benefits shall be paid as provided in subsection (3) of this section to exhaustees eligible under subsection (4) of this section.

(2) The additional benefit period applies to counties having a population of less than five hundred thousand beginning with the third week after a week in which the commissioner determines that a county meets two of the following three criteria, as determined by the department, for the most recent year in which such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. The additional benefit period for a county may end no sooner than fifty-two weeks after the additional benefit period begins.

(3) Additional benefits shall be paid as follows:

(a) No new claims for additional benefits shall be accepted for weeks beginning after July (~~(3)~~) 1, (~~(1993)~~) 1995, but for claims established on or

before July ((3)) 1, ((1993)) 1995, weeks of unemployment occurring after July ((3)) 1, ((1993)) 1995, shall be compensated as provided in this section.

(b) The total additional benefit amount shall be ~~((fifty-two))~~ one hundred four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year. Additional benefits shall not be payable for weeks more than ~~((one))~~ two years beyond the end of the benefit year of the regular claim for an individual whose benefit year ends on or after July 27, 1991, and shall not be payable for weeks ending on or after ~~((one))~~ two years after March 26, 1992, for individuals who become eligible as a result of chapter 47, Laws of 1992~~((and shall be payable for up to five weeks following the completion of the training required by this section))~~.

(c) Notwithstanding the provisions of (b) of this subsection, individuals will be entitled to up to five additional weeks of benefits following the completion or termination of training.

(d) The weekly benefit amount shall be calculated as specified in RCW 50.22.040.

~~((d))~~ (e) Benefits paid under this section shall be paid under the same terms and conditions as regular benefits and shall not be charged to the experience rating account of individual employers. The additional benefit period shall be suspended with the start of an extended benefit period, or any totally federally funded benefit program, with eligibility criteria and benefits comparable to the program established by this section, and shall resume the first week following the end of the federal program.

(f) The amendments in chapter . . . , Laws of 1993 (this act) affecting subsection (3) (b) and (c) of this section shall apply in the case of all individuals determined to be monetarily eligible under this section without regard to the date eligibility was determined.

(4) An additional benefit eligibility period is established for any exhaustee who:

(a)(i) At the time of last separation from employment, resided in or was employed in a county identified under subsection (2) of this section; or

(ii) During his or her base year, earned wages in at least six hundred eighty hours in the forest products industry, which shall be determined by the department but shall include the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting the industries covered under this subsection. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c); and

(b)(i) Has received notice of termination or layoff; and

(ii) Is unlikely to return to employment in his or her principal occupation or previous industry because of a diminishing demand within his or her labor market for his or her skills in the occupation or industry; and

(c)(i)(A) Is notified by the department of the requirements of this section and develops an individual training program that is submitted to the commissioner for approval not later than sixty days after the individual is notified of the requirements of this section, and enters the approved training program not later than ninety days after the date of the individual's termination or layoff, or ninety days after July 1, 1991, whichever is later, unless the department determines that the training is not available during the ninety-day period, in which case the individual shall enter training as soon as it is available; or

(B) Is unemployed as the result of a plant closure that occurs after November 1, 1992, in a county identified under subsection (2) of this section, did not comply with the requirements of (c)(i)(A) of this subsection due to good cause as demonstrated to the department, such as ambiguity over possible sale of the plant, develops a training program that is submitted to the commissioner for approval not later than sixty days from a date determined by the department to accommodate the good cause, and enters the approved training program not later than ninety days after the revised date established by the department, unless the department determines that the training is not available during the ninety-day period, in which case the individual shall enter training as soon as it is available;  
or

(ii) Is enrolled in training approved under this section on a full-time basis and maintains satisfactory progress in the training; and

(d) Does not receive a training allowance or stipend under the provisions of any federal or state law.

(5) For the purposes of this section:

(a) "Training program" means:

(i) A remedial education program determined to be necessary after counseling at the educational institution in which the individual enrolls pursuant to his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is training for a labor demand occupation;

(B) Is likely to facilitate a substantial enhancement of the individual's marketable skills and earning power; and

(C) Does not include on-the-job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives additional benefits under subsection (1) of this section.

(b) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410(3).

(c) "Training allowance or stipend" means discretionary use, cash-in-hand payments available to the individual to be used as the individual sees fit, but

does not mean direct or indirect compensation for training costs, such as tuition or books and supplies.

(6) The commissioner shall adopt rules as necessary to implement this section.

(7) For the purpose of this section, an individual who has a benefit year beginning after January 1, 1989, and ending before July 27, 1991, shall be treated as if his or her benefit year ended on July 27, 1991.

**NEW SECTION.** Sec. 11. Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

**NEW SECTION.** Sec. 12. Sections 1 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993.

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 317

[Substitute House Bill 1545]

### MUNICIPAL AND DISTRICT COURTS—REVISIONS

Effective Date: 1/1/95

AN ACT Relating to municipal courts; amending RCW 3.62.070, 42.12.010, and 29.15.025; adding new sections to chapter 3.46 RCW; adding new sections to chapter 3.50 RCW; adding a new section to chapter 3.62 RCW; and providing an effective date.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 3.46 RCW to read as follows:

Any city that terminates a municipal department under this chapter may not establish another municipal department under this chapter until at least ten years have elapsed from the date of termination.

**NEW SECTION.** Sec. 2. A new section is added to chapter 3.50 RCW to read as follows:

Any city that terminates a municipal court under this chapter may not establish another municipal court under this chapter until at least ten years have elapsed from the date of termination.

**NEW SECTION.** Sec. 3. A new section is added to chapter 3.46 RCW to read as follows:

Notwithstanding RCW 3.46.050 and 3.46.060, judicial positions may be filled only by election under the following circumstances:

(1) Each full-time equivalent judicial position shall be filled by election. This requirement applies regardless of how many judges are employed to fill the position. For purposes of this section, a full-time equivalent position is thirty-five or more hours per week of compensated time.

(2) In any city with one or more full-time equivalent judicial positions, an additional judicial position or positions that is or are in combination more than one-half of a full-time equivalent position shall be filled by election.

NEW SECTION. Sec. 4. A new section is added to chapter 3.50 RCW to read as follows:

Notwithstanding RCW 3.50.040 and 3.50.050, judicial positions may be filled only by election under the following circumstances:

(1) Each full-time equivalent judicial position shall be filled by election. This requirement applies regardless of how many judges are employed to fill the position. For purposes of this section, a full-time equivalent position is thirty-five or more hours per week of compensated time.

(2) In any city with one or more full-time equivalent judicial positions, an additional judicial position or positions that is or are in combination more than one-half of a full-time equivalent position shall also be filled by election.

NEW SECTION. Sec. 5. A new section is added to chapter 3.46 RCW to read as follows:

A judge of a municipal department of a district court need not be a resident of the city in which the department is created, but must be a resident of the county in which the city is located.

NEW SECTION. Sec. 6. A new section is added to chapter 3.50 RCW to read as follows:

A judge of a municipal court need not be a resident of the city in which the court is created, but must be a resident of the county in which the city is located.

NEW SECTION. Sec. 7. A new section is added to chapter 3.62 RCW to read as follows:

District courts shall take all steps necessary to promote efficiencies in calendaring in order to minimize costs to cities that use the district courts. Cities shall cooperate with the district courts in order to minimize those costs.

Sec. 8. RCW 3.62.070 and 1984 c 258 s 39 are each amended to read as follows:

Except in traffic cases wherein bail is forfeited or a monetary penalty paid to a violations bureau, and except in cases filed in municipal departments established pursuant to chapter 3.46 RCW and except in cases where a city has contracted with another city for such services pursuant to chapter 39.34 RCW, in every criminal or traffic infraction action filed by a city for an ordinance violation, the city shall be charged a filing fee determined pursuant to an

agreement as provided for in chapter 39.34 RCW, the interlocal cooperation act, between the city and the county providing the court service. In such criminal or traffic infraction actions the cost of providing services necessary for the preparation and presentation of a defense at public expense are not within the filing fee and shall be paid by the city. In all other criminal or traffic infraction actions, no filing fee shall be assessed or collected: PROVIDED, That in such cases, for the purposes of RCW 3.62.010, four dollars or the agreed filing fee of each fine or penalty, whichever is greater, shall be deemed filing costs. (~~In the event no agreement is reached between a municipal corporation and the county providing the court service within ninety days of September 1, 1979, the municipal corporation and the county shall be deemed to have entered into an agreement to submit the issue to arbitration pursuant to chapter 7.04 RCW, and the municipal corporation and the county shall be entitled to the same rights and subject to the same duties as other parties who have agreed to submit to arbitration pursuant to chapter 7.04 RCW. In the event that such issue is submitted to arbitration, the arbitrator or arbitrators shall only consider those additional costs borne by the county in providing district court services for such city.~~)

If, one hundred twenty days before the expiration of an existing contract under this section, the city and the county are unable to agree on terms for renewal, the matter shall be submitted to binding arbitration. The city and the county shall each select one arbitrator, the two of whom shall pick a third arbitrator. The existing contract shall remain in effect until a new agreement is reached or until an arbitration award is made.

**Sec. 9.** RCW 42.12.010 and 1981 c 180 s 4 are each amended to read as follows:

Every elective office shall become vacant on the happening of any of the following events:

- (1) The death of the incumbent;
- (2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;
- (3) His or her removal;
- (4) Except as provided in sections 5 and 6 of this act, his or her ceasing to be a legally qualified elector of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed;
- (5) His or her conviction of a felony, or of any offense involving a violation of his or her official oath;
- (6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;
- (7) The decision of a competent tribunal declaring void his or her election or appointment; or



(8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond.

**Sec. 10.** RCW 29.15.025 and 1991 c 178 s 1 are each amended to read as follows:

(1) A person filing a declaration and affidavit of candidacy for an office shall, at the time of filing, possess the qualifications specified by law for persons who may be elected to the office.

(2) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in sections 5 and 6 of this act, the candidate is, at the time the candidate's declaration and affidavit of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration and affidavit of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations and affidavits of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(3) This section does not apply to the office of a member of the United States congress.

**NEW SECTION.** **Sec. 11.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** **Sec. 12.** This act shall take effect January 1, 1995.

Passed the House April 20, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 318

[Substitute House Bill 1560]

### UNIFORM INTERSTATE FAMILY SUPPORT ACT

Effective Date: 7/1/94

AN ACT Relating to the uniform interstate family support act; adding new sections to chapter 26.21 RCW; creating a new section; repealing RCW 26.21.010, 26.21.020, 26.21.030, 26.21.040, 26.21.050, 26.21.060, 26.21.070, 26.21.080, 26.21.090, 26.21.092, 26.21.094, 26.21.100, 26.21.102, 26.21.104, 26.21.106, 26.21.110, 26.21.112, 26.21.114, 26.21.116, 26.21.120, 26.21.130, 26.21.140, 26.21.150, 26.21.160, 26.21.170, 26.21.180, 26.21.190, 26.21.200, 26.21.210, 26.21.220, 26.21.230, 26.21.240, 26.21.250, 26.21.260, 26.21.270, and 26.21.900; and providing an effective date.

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

**ARTICLE 1 GENERAL PROVISIONS****NEW SECTION. Sec. 101. DEFINITIONS.** In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by chapter 6.27 RCW, to withhold support from the income of the obligor.

(7) "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(c) An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent:

- (a) Who owes or is alleged to owe a duty of support;
- (b) Who is alleged but has not been adjudicated to be a parent of a child;

or

- (c) Who is liable under a support order.

(14) "Register" means to record or file in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically, a support order or judgment determining parentage.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter.

(20) "Support enforcement agency" means a public official or agency authorized to seek:

- (a) Enforcement of support orders or laws relating to the duty of support;
- (b) Establishment or modification of child support;
- (c) Determination of parentage; or
- (d) Location of obligors or their assets.

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

**NEW SECTION. Sec. 102. TRIBUNAL OF THIS STATE.** The superior court is the state tribunal for judicial proceedings and the department of social and health services office of support enforcement is the state tribunal for administrative proceedings.

NEW SECTION. **Sec. 103. REMEDIES CUMULATIVE.** Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

**ARTICLE 2 JURISDICTION**

**PART A EXTENDED PERSONAL JURISDICTION**

NEW SECTION. **Sec. 201. BASES FOR JURISDICTION OVER NONRESIDENT.** In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with summons within this state;
- (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this state;
- (4) The individual resided in this state and provided prenatal expenses or support for the child;
- (5) The child resides in this state as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
- (7) There is any other basis consistent with the Constitutions of this state and the United States for the exercise of personal jurisdiction.

NEW SECTION. **Sec. 202. PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT.** A tribunal of this state exercising personal jurisdiction over a nonresident under section 201 of this act may apply section 316 of this act to receive evidence from another state, and section 318 of this act to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 of this act do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

**PART B PROCEEDINGS INVOLVING TWO OR MORE STATES**

NEW SECTION. **Sec. 203. INITIATING AND RESPONDING TRIBUNAL OF THIS STATE.** Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

NEW SECTION. **Sec. 204. SIMULTANEOUS PROCEEDINGS IN ANOTHER STATE.** (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(a) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) If relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(a) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) The contesting party timely challenges the exercise of jurisdiction in this state; and

(c) If relevant, the other state is the home state of the child.

**NEW SECTION. Sec. 205. CONTINUING, EXCLUSIVE JURISDICTION.** (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) Until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(a) Enforce the order that was modified as to amounts accruing before the modification;

(b) Enforce nonmodifiable aspects of that order; and

(c) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law substantially similar to this chapter.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order

throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

**NEW SECTION. Sec. 206. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER BY TRIBUNAL HAVING CONTINUING JURISDICTION.**

(1) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(2) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 316 of this act to receive evidence from another state and section 318 of this act to obtain discovery through a tribunal of another state.

(3) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

**PART C RECONCILIATION WITH ORDERS OF OTHER STATES**

**NEW SECTION. Sec. 207. RECOGNITION OF CHILD SUPPORT ORDERS.**

(1) If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

(b) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.

(c) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(d) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state may issue a child support order, which must be recognized.

(2) The tribunal that has issued an order recognized under subsection (1) of this section is the tribunal having continuing, exclusive jurisdiction.

**NEW SECTION. Sec. 208. MULTIPLE CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEES.** In responding to multiple registrations or

petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

**NEW SECTION. Sec. 209. CREDIT FOR PAYMENTS.** Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

### **ARTICLE 3 CIVIL PROVISIONS OF GENERAL APPLICATION**

#### **NEW SECTION. Sec. 301. PROCEEDINGS UNDER THIS CHAPTER.**

(1) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(2) This chapter provides for the following proceedings:

(a) Establishment of an order for spousal support or child support pursuant to Article 4 of this act;

(b) Enforcement of a support order and income-withholding order of another state without registration pursuant to Article 5 of this act;

(c) Registration of an order for spousal support or child support of another state for enforcement pursuant to Article 6 of this act;

(d) Modification of an order for child support or spousal support issued by a tribunal of this state pursuant to Article 2, Part B of this act;

(e) Registration of an order for child support of another state for modification pursuant to Article 6 of this act;

(f) Determination of parentage pursuant to Article 7 of this act; and

(g) Assertion of jurisdiction over nonresidents pursuant to Article 2, Part A of this act.

(3) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

**NEW SECTION. Sec. 302. ACTION BY MINOR PARENT.** A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

**NEW SECTION. Sec. 303. APPLICATION OF LAW OF THIS STATE.** Except as otherwise provided by this chapter, a responding tribunal of this state:

(1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

**NEW SECTION. Sec. 304. DUTIES OF INITIATING TRIBUNAL.** Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

**NEW SECTION. Sec. 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.** (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 301(3) of this act, it shall cause the petition or pleading to be filed and notify the petitioner by first class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) Order income withholding;

(d) Determine the amount of any arrearages, and specify a method of payment;

(e) Enforce orders by civil or criminal contempt, or both;

(f) Set aside property for satisfaction of the support order;

(g) Place liens and order execution on the obligor's property;

(h) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) Issue a bench warrant or writ of arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant or writ of arrest in any local and state computer systems for criminal warrants;

(j) Order the obligor to seek appropriate employment by specified methods;

(k) Award reasonable attorneys' fees and other fees and costs; and

(l) Grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.



(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order by first class mail to the petitioner and the respondent and to the initiating tribunal, if any.

**NEW SECTION. Sec. 306. INAPPROPRIATE TRIBUNAL.** If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first class mail where and when the pleading was sent.

**NEW SECTION. Sec. 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.** (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(2) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(a) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) Request an appropriate tribunal to set a date, time, and place for a hearing;

(c) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first class mail to the petitioner;

(e) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first class mail to the petitioner; and

(f) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

**NEW SECTION. Sec. 308. DUTY OF ATTORNEY GENERAL.** If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

**NEW SECTION. Sec. 309. PRIVATE COUNSEL.** An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

**NEW SECTION. Sec. 310. DUTIES OF STATE INFORMATION AGENCY.** (1) The department of social and health services office of support enforcement is the state information agency under this chapter.

(2) The state information agency shall:

(a) Compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) Maintain a register of tribunals and support enforcement agencies received from other states;

(c) Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(d) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

**NEW SECTION. Sec. 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.** (1) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section 312 of this act, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

**NEW SECTION. Sec. 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES.** Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

**NEW SECTION. Sec. 313. COSTS AND FEES.** (1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails in a support enforcement proceeding, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal in a support enforcement proceeding may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by RCW 4.84.080, civil rule 11 or, if the obligee or the support enforcement agency has acted in bad faith.

(3) A responding tribunal may assess filing fees, reasonable attorneys' fees, and other costs to either party, and necessary travel and other reasonable costs incurred by the obligee and the obligee's witnesses to the obligee, in a proceeding to establish or modify support. Assessments under this section shall be made in accordance with RCW 4.84.080 and 26.09.140 and civil rule 11.

(4) Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(5) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay.

**NEW SECTION. Sec. 314. LIMITED IMMUNITY OF PETITIONER.**

(1) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

**NEW SECTION. Sec. 315. NONPARENTAGE AS DEFENSE.** A party whose parentage of a child has been previously determined by order of a tribunal may not plead nonparentage as a defense to a proceeding under this chapter.

**NEW SECTION. Sec. 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.** (1) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(2) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding

tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

**NEW SECTION. Sec. 317. COMMUNICATIONS BETWEEN TRIBUNALS.** A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

**NEW SECTION. Sec. 318. ASSISTANCE WITH DISCOVERY.** A tribunal of this state may:

(1) Request a tribunal of another state to assist in obtaining discovery; and

(2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

**NEW SECTION. Sec. 319. RECEIPT AND DISBURSEMENT OF PAYMENTS.** A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

**ARTICLE 4 ESTABLISHMENT OF SUPPORT ORDER**

**NEW SECTION. Sec. 401.** PETITION TO ESTABLISH SUPPORT ORDER. (1) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

(a) The individual seeking the order resides in another state; or  
 (b) The support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if:

(a) The respondent has signed a verified statement acknowledging parentage;  
 (b) The respondent has been determined by order of a tribunal to be the parent; or

(c) There is other clear, cogent, and convincing evidence that the respondent is the child's parent.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 305 of this act.

**ARTICLE 5 DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION**

**NEW SECTION. Sec. 501.** RECOGNITION OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE. (1) An income-withholding order issued in another state may be sent by first class mail to the person or entity defined as the obligor's employer under chapter 6.27 RCW without first filing a petition or comparable pleading or registering the order with a tribunal of this state. Upon receipt of the order, the employer shall:

(a) Treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state;

(b) Immediately provide a copy of the order to the obligor; and

(c) Distribute the funds as directed in the income-withholding order.

(2) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. Section 604 of this act applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:

(a) The person or agency designated to receive payments in the income-withholding order; or

(b) If no person or agency is designated, the obligee.

**NEW SECTION. Sec. 502.** ADMINISTRATIVE ENFORCEMENT OF ORDERS. (1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any

administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

**ARTICLE 6 ENFORCEMENT AND MODIFICATION OF  
SUPPORT ORDER AFTER REGISTRATION  
PART A REGISTRATION AND ENFORCEMENT OF  
SUPPORT ORDER**

NEW SECTION. **Sec. 601.** REGISTRATION OF ORDER FOR ENFORCEMENT. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

NEW SECTION. **Sec. 602.** PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT. (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the superior court of any county in this state where the obligor resides, works, or has property:

(a) A letter of transmittal to the tribunal requesting registration and enforcement;

(b) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(d) The name of the obligor and, if known:

(i) The obligor's address and social security number;

(ii) The name and address of the obligor's employer and any other source of income of the obligor; and

(iii) A description and the location of property of the obligor in this state not exempt from execution; and

(e) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

NEW SECTION. **Sec. 603.** EFFECT OF REGISTRATION FOR ENFORCEMENT. (1) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

**NEW SECTION. Sec. 604. CHOICE OF LAW.** (1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

### **PART B CONTEST OF VALIDITY OR ENFORCEMENT**

**NEW SECTION. Sec. 605. NOTICE OF REGISTRATION OF ORDER.** (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by certified or registered mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of receipt by certified or registered mail or personal service of the notice given to a nonregistering party within the state and within sixty days after the date of receipt by certified or registered mail or personal service of the notice on a nonregistering party outside of the state;

(c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(d) Of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state.

**NEW SECTION. Sec. 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER.** (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of receipt of certified or registered mail or the date of personal service of notice of the registration on the nonmoving party within this state, or, within sixty days after the receipt of

certified or registered mail or personal service of the notice on the nonmoving party outside of the state. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 607 of this act.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first class mail of the date, time, and place of the hearing.

**NEW SECTION. Sec. 607. CONTEST OF REGISTRATION OR ENFORCEMENT.** (1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) The issuing tribunal lacked personal jurisdiction over the contesting party;

(b) The order was obtained by fraud;

(c) The order has been vacated, suspended, or modified by a later order;

(d) The issuing tribunal has stayed the order pending appeal;

(e) There is a defense under the law of this state to the remedy sought;

(f) Full or partial payment has been made; or

(g) The statute of limitation under section 604 of this act precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under subsection (1) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

**NEW SECTION. Sec. 608. CONFIRMED ORDER.** Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.



**PART C REGISTRATION AND MODIFICATION OF  
CHILD SUPPORT ORDER**

**NEW SECTION. Sec. 609.** PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Part A of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

**NEW SECTION. Sec. 610.** EFFECT OF REGISTRATION FOR MODIFICATION. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 611 of this act have been met.

**NEW SECTION. Sec. 611.** MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE. (1) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:

(a) The following requirements are met:

(i) The child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) A petitioner who is a nonresident of this state seeks modification; and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

(5) Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.

**NEW SECTION. Sec. 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.** A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

(1) Enforce the order that was modified only as to amounts accruing before the modification;

(2) Enforce only nonmodifiable aspects of that order;

(3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and

(4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

### **ARTICLE 7 DETERMINATION OF PARENTAGE**

**NEW SECTION. Sec. 701. PROCEEDING TO DETERMINE PARENTAGE.** (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the Uniform Parentage Act, chapter 26.26 RCW, procedural and substantive law of this state, and the rules of this state on choice of law.

### **ARTICLE 8 INTERSTATE RENDITION**

**NEW SECTION. Sec. 801. GROUNDS FOR RENDITION.** (1) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from the demanding state.

**NEW SECTION. Sec. 802. CONDITIONS OF RENDITION.** (1) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of

an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

NEW SECTION. **Sec. 901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NEW SECTION. **Sec. 902. SHORT TITLE.** This chapter may be cited as the Uniform Interstate Family Support Act.

NEW SECTION. **Sec. 903. SEVERABILITY CLAUSE.** 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. 904. REPEALS.** The following acts or parts of acts are each repealed:

(1) RCW 26.21.010 and 1972 ex.s. c 31 s 1, 1963 c 45 s 1, & 1951 c 196 s 2;

(2) RCW 26.21.020 and 1951 c 196 s 3;

(3) RCW 26.21.030 and 1963 c 45 s 2 & 1951 c 196 s 4;

(4) RCW 26.21.040 and 1963 c 45 s 3 & 1951 c 196 s 5;

(5) RCW 26.21.050 and 1971 ex.s. c 46 s 30, 1963 c 45 s 4, & 1951 c 196 s 6;

(6) RCW 26.21.060 and 1963 c 45 s 5 & 1951 c 196 s 7;

(7) RCW 26.21.070 and 1963 c 45 s 6 & 1951 c 196 s 8;

(8) RCW 26.21.080 and 1963 c 45 s 7 & 1951 c 196 s 9;

- (9) RCW 26.21.090 and 1963 c 45 s 8 & 1951 c 196 s 10;
- (10) RCW 26.21.092 and 1963 c 45 s 9;
- (11) RCW 26.21.094 and 1963 c 45 s 10;
- (12) RCW 26.21.100 and 1963 c 45 s 11 & 1951 c 196 s 11;
- (13) RCW 26.21.102 and 1963 c 45 s 12;
- (14) RCW 26.21.104 and 1963 c 45 s 13;
- (15) RCW 26.21.106 and 1963 c 45 s 14;
- (16) RCW 26.21.110 and 1963 c 45 s 15 & 1951 c 196 s 12;
- (17) RCW 26.21.112 and 1963 c 45 s 16;
- (18) RCW 26.21.114 and 1963 c 45 s 17;
- (19) RCW 26.21.116 and 1963 c 45 s 18;
- (20) RCW 26.21.120 and 1963 c 45 s 19 & 1951 c 196 s 13;
- (21) RCW 26.21.130 and 1963 c 45 s 20 & 1951 c 196 s 14;
- (22) RCW 26.21.140 and 1987 c 435 s 24, 1963 c 45 s 21, & 1951 c 196 s 15;
- (23) RCW 26.21.150 and 1987 c 435 s 25, 1963 c 45 s 22, & 1951 c 196 s 16;
- (24) RCW 26.21.160 and 1987 c 435 s 26, 1963 c 45 s 23, & 1951 c 196 s 17;
- (25) RCW 26.21.170 and 1963 c 45 s 24 & 1951 c 196 s 18;
- (26) RCW 26.21.180 and 1963 c 45 s 25;
- (27) RCW 26.21.190 and 1963 c 45 s 26;
- (28) RCW 26.21.200 and 1963 c 45 s 27;
- (29) RCW 26.21.210 and 1963 c 45 s 28;
- (30) RCW 26.21.220 and 1963 c 45 s 29;
- (31) RCW 26.21.230 and 1991 c 367 s 37 & 1963 c 45 s 30;
- (32) RCW 26.21.240 and 1963 c 45 s 31;
- (33) RCW 26.21.250 and 1963 c 45 s 32;
- (34) RCW 26.21.260 and 1963 c 45 s 33;
- (35) RCW 26.21.270 and 1963 c 45 s 34; and
- (36) RCW 26.21.900 and 1951 c 196 s 1.

**NEW SECTION. Sec. 905. CODIFICATION.** Sections 101 through 903 of this act are each added to chapter 26.21 RCW.

**NEW SECTION. Sec. 906. CAPTIONS, PART HEADINGS, AND ARTICLE DESIGNATIONS NOT LAW.** Captions, part headings, and article designations as used in this act constitute no part of the law.

**NEW SECTION. Sec. 907. EFFECTIVE DATE.** This act shall take effect July 1, 1994.

Passed the House March 12, 1993.  
Passed the Senate April 18, 1993.  
Approved by the Governor May 12, 1993.  
Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 319**

[Substitute House Bill 1595]

**SERVICE AS ELECTED OFFICIAL WHILE RECEIVING RETIREMENT  
BENEFITS—CONDITIONS AND LIMITATIONS**

**Effective Date: 7/25/93**

AN ACT Relating to retirement benefits for elected officials; and reenacting and amending RCW 41.40.023.

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

**Sec. 1.** RCW 41.40.023 and 1990 c 274 s 10 and 1990 c 192 s 4 are each reenacted and amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: **PROVIDED**, That such persons shall have the option of applying for membership during such periods of employment: **AND PROVIDED FURTHER**, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: **AND PROVIDED FURTHER**, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office (~~(in a town or city)~~) who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official (~~(of a town or city)~~). A member who receives more than ~~((ten))~~ fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan: PROVIDED, HOWEVER, In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide: AND PROVIDED FURTHER, That an employee shall be allowed membership if otherwise eligible while receiving survivor's benefits: AND PROVIDED FURTHER, That an employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (a) Membership in the plan created under chapter 2.14 RCW; or (b) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as agency vendors;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organiza-

tion which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Plan I retirees employed in eligible positions on a temporary basis for a period not to exceed five months in a calendar year: PROVIDED, That if such employees are employed for more than five months in a calendar year in an eligible position they shall become members of the system prospectively;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first

day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only from the date of application;

(17) The city manager or chief administrative officer of a city or town who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Passed the House March 9, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 320

[Engrossed Substitute House Bill 1662]

### COMMUNITY ECONOMIC REVITALIZATION BOARD—REAUTHORIZATION AND REVISIONS

**Effective Date:** 7/25/93 - Except Section 8 which becomes effective on 5/12/93

AN ACT Relating to the community economic revitalization board; amending RCW 43.160.020, 43.160.030, 43.160.035, 43.160.060, 43.160.076, 43.160.077, 43.160.200, and 43.160.900; amending 1991 c 314 s 32 (uncodified); amending 1991 c 314 s 34 (uncodified); reenacting and amending RCW 42.17.310; and declaring an emergency.

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

**Sec. 1.** RCW 43.160.020 and 1992 c 21 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the community economic revitalization board.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this chapter.

(3) "Department" means the department of trade and economic development or its successor with respect to the powers granted by this chapter.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Industrial development facilities" means "industrial development facilities" as defined in RCW 39.84.020.



(6) "Industrial development revenue bonds" means tax-exempt revenue bonds used to fund industrial development facilities.

(7) "Local government" or "political subdivision" means any port district, county, city, ~~((or))~~ town, or special utility district.

(8) "Sponsor" means any of the following entities which customarily provide service or otherwise aid in industrial or other financing and are approved as a sponsor by the board: A bank, trust company, savings bank, investment bank, national banking association, savings and loan association, building and loan association, credit union, insurance company, or any other financial institution, governmental agency, or holding company of any entity specified in this subsection.

(9) "Umbrella bonds" means industrial development revenue bonds from which the proceeds are loaned, transferred, or otherwise made available to two or more users under this chapter.

(10) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and receiving or applying to receive revenues from bonds issued under this chapter.

(11) "Timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in RCW 43.31.631, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection.

**Sec. 2.** RCW 43.160.030 and 1987 c 422 s 2 are each amended to read as follows:

(1) The community economic revitalization board is hereby created to exercise the powers granted under this chapter.

(2) The board shall consist of the chairman of and one minority member appointed by the speaker of the house of representatives from the committee on ~~((trade and economic development))~~ trade, economic development, and housing of the house of representatives, the chairman of and one minority member appointed by the president of the senate from the committee on ~~((commerce and labor of the senate, or the equivalent standing committees))~~ trade, technology, and economic development of the senate, and the following members appointed

by the governor: A recognized private or public sector economist; one port district official; one county official; one city official; one representative of the public; one representative of small businesses each from: (a) The area west of Puget Sound, (b) the area east of Puget Sound and west of the Cascade range, (c) the area east of the Cascade range and west of the Columbia river, and (d) the area east of the Columbia river; one executive from large businesses each from the area west of the Cascades and the area east of the Cascades. The appointive members shall initially be appointed to terms as follows: Three members for one-year terms, three members for two-year terms, and three members for three-year terms which shall include the chair. Thereafter each succeeding term shall be for three years. The chair of the board shall be selected by the governor (~~and should be a member of the governor's council of economic advisors~~). The members of the board shall elect one of their members to serve as vice-chair. The director of trade and economic development, the director of community development, the director of revenue, the commissioner of employment security, and the secretary of transportation shall serve as nonvoting advisory members of the board.

(3) Staff support shall be provided by the department of trade and economic development to assist the board in implementing this chapter and the allocation of private activity bonds.

(4) All appointive members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) If a vacancy occurs by death, resignation, or otherwise of appointive members of the board, the governor shall fill the same for the unexpired term. Any members of the board, appointive or otherwise, may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

**Sec. 3.** RCW 43.160.035 and 1987 c 422 s 3 are each amended to read as follows:

Each member of the house of representatives who is appointed to the community economic revitalization board under RCW 43.160.030 may designate another member of the trade ~~(and)~~, economic development, and housing committee of the house of representatives to take his or her place on the board for meetings at which the member will be absent. The designee shall have all powers to vote and participate in board deliberations as have the other board members. Each member of the senate who is appointed to the community economic revitalization board under RCW 43.160.030 may designate another member of the ~~((commerce and labor))~~ trade, technology, and economic development committee of the senate to take his or her place on the board for meetings at which the member will be absent. The designee shall have all powers to vote and participate in board deliberations as have the other board members. Each agency head of an executive agency who is appointed to serve as a nonvoting advisory member of the community economic revitalization board

under RCW 43.160.030 may designate an agency employee to take his or her place on the board for meetings at which the agency head will be absent. The designee will have all powers to participate in board deliberations as have the other board members but shall not have voting powers.

**Sec. 4.** RCW 43.160.060 and 1990 1st ex.s. c 17 s 73 are each amended to read as follows:

The board is authorized to make direct loans to political subdivisions of the state for the purposes of assisting the political subdivisions in financing the cost of public facilities, including development of land and improvements for public facilities, as well as the ((~~acquisition,~~)) construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

(1) The board shall not make a grant or loan:

(a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.

(2) The board shall only make grants or loans:

(a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, and industrial distribution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to distressed rural areas; or (v) which substantially support the trading of goods or services outside of the state's borders.

(b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.

(c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the grant or loan is made.

(3) The board shall prioritize each proposed project according to the relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located. As long as there is more demand for loans or grants than there are funds available for loans or grants, the board is instructed to fund projects in order of their priority.

(4) A responsible official of the political subdivision shall be present during board deliberations and provide information that the board requests.

Before any loan or grant application is approved, the political subdivision seeking the loan or grant must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

**Sec. 5.** RCW 43.160.076 and 1991 c 314 s 24 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for loans and grants in a biennium, the board shall spend at least fifty percent for grants and loans for projects in distressed counties or timber impact areas. For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for a loan or grant is filed, exceeds the average state employment for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties or timber impact areas are clearly insufficient to use up the fifty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for loans and grants for projects not located in distressed counties or timber impact areas.

**Sec. 6.** RCW 43.160.077 and 1989 c 431 s 63 are each amended to read as follows:

(1) ~~((Before))~~ When the board ~~((consideration of))~~ receives an application from a political subdivision that includes a request for assistance in financing the cost of public facilities to encourage the development of a private facility to process recyclable materials, a copy of the application shall be ~~((forwarded))~~ sent by the board to the department of ecology.

~~(2) ((The department of ecology shall submit a recommendation on all applications related to processing recyclable materials to the board for their consideration.~~

~~(3) Upon receiving an application for assistance in financing the cost of public facilities to encourage the development of a private facility to process~~

~~recyclable materials from the board, the department of ecology shall, within thirty days, determine whether or not the proposed assistance:~~

- ~~(a) Has a significant impact on the residential and commercial waste stream;~~
- ~~(b) Results in a product that has a ready market;~~
- ~~(c) Does not jeopardize any other planned market development projects; and~~
- ~~(d) Results in a product that would otherwise be purchased out of state.~~

~~(4) Upon completion of its determination of the factors contained in subsection (3) of this section and any other factors it deems pertinent, the department of ecology shall forward its recommended approval, as submitted or amended, or recommended disapproval of the proposed improvements to the board, along with any recommendation it may wish to make concerning the desirability and feasibility of the proposed market development. If the department of ecology recommends disapproval of any proposed project, it shall specify its reasons for recommending disapproval.~~

~~(5))~~ The board shall notify the department of ecology of its decision regarding any application made under this section.

**Sec. 7.** RCW 43.160.200 and 1991 c 314 s 23 are each amended to read as follows:

(1) The economic development account is created within the public facilities construction loan revolving fund under RCW 43.160.080. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 43.160.010(4) and this section. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) Applications under this section for assistance from the economic development account are subject to all of the applicable criteria set forth under this chapter, as well as procedures and criteria established by the board, except as otherwise provided.

(3) Eligible applicants under this section are limited to political subdivisions of the state in timber impact areas that demonstrate, to the satisfaction of the board, the local economy's dependence on the forest products industry.

(4) Applicants must demonstrate that their request is part of an economic development plan consistent with applicable state planning requirements. Applicants must demonstrate that tourism projects have been approved by the local government ~~((and are part of a regional tourism plan approved by the local and regional tourism organizations))~~. Industrial projects must be approved by the local government and the associate development organization.

(5) Publicly owned projects may be financed under this section upon proof by the applicant that the public project is a necessary component of, or constitutes in whole, a tourism project.

(6) Applications must demonstrate local match and participation. Such match may include: Land donation, other public or private funds or both, or other means of local commitment to the project.

(7) Board financing for feasibility studies shall not exceed twenty-five thousand dollars per study. Board funds for feasibility studies may be provided

as a grant and require a dollar for dollar match with up to one-half in-kind match allowed.

(8) Board financing for tourism projects shall not exceed two hundred fifty thousand dollars. Other public facility projects under this section shall not exceed five hundred thousand dollars. Loans with flexible terms and conditions to meet the needs of the applicants shall be provided. Grants may also be authorized, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

(9) The board shall develop guidelines for allowable local match and feasibility studies.

(10) Applications under this section need not demonstrate evidence that specific private development or expansion is ready to occur or will occur if funds are provided.

(11) The board shall establish guidelines for making grants and loans under this section to ensure that the requirements of this chapter are complied with. The guidelines shall include:

(a) A process to equitably compare and evaluate applications from competing communities.

(b) Criteria to ensure that approved projects will have a high probability of success and are likely to provide long-term economic benefits to the community. The criteria shall include: (i) A minimum amount of local participation, determined by the board per application, to verify community support for the project; (ii) an analysis that establishes the project is feasible using standard economic principles; and (iii) an explanation from the applicant regarding how the project is consistent with the communities' economic strategy and goals.

(c) A method of evaluating the impact of the loans or grants on the economy of the community and whether the loans or grants achieved their purpose.

**Sec. 8.** RCW 43.160.900 and 1987 c 422 s 10 are each amended to read as follows:

~~((The community economic revitalization board and its powers and duties shall be terminated on June 30, 1993, and shall be subject to the procedures required by chapter 43.131 RCW. This chapter expires June 30, 1994. Any remaining duties of the community economic revitalization board after June 30, 1993, regarding repayment of loans made by the community economic revitalization board are transferred to the department of revenue on June 30, 1993))~~ The community economic revitalization board shall report to the appropriate standing committees of the legislature biennially on the implementation of this chapter. The report shall include information on the number of applications for community economic revitalization board assistance, the number and types of projects approved, the grant or loan amount awarded each project, the projected number of jobs created or retained by each project, the actual number of jobs created or retained by each project, the number of delinquent loans, and the number of project terminations. The report may also include

additional performance measures and recommendations for programmatic changes. The first report shall be submitted by December 1, 1994.

**Sec. 9.** RCW 42.17.310 and 1992 c 139 s 5 and 1992 c 71 s 12 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended

except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for ~~((#))~~ (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or ~~((b))~~ (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, 43.160, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.



(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or a rape crisis center as defined in RCW 70.125.030.

(cc) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(dd) Business related information protected from public inspection and copying under RCW 15.86.110.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

**Sec. 10.** 1991 c 314 s 32 (uncodified) is amended to read as follows:

RCW 43.160.076 and 1991 c 314 s 24 & 1985 c 446 s 6 are each repealed effective June 30, (~~1993~~) 1995.

**Sec. 11.** 1991 c 314 s 34 (uncodified) is amended to read as follows:  
 ((Section 25 of this act)) RCW 43.160.210 shall take effect July 1, ((1993))  
1995.

**NEW SECTION.** **Sec. 12.** Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 22, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 321

[Substitute House Bill 1667]

### ON-SITE SEWAGE SYSTEMS—USE OF UNAPPROVED ADDITIVES PROHIBITED

Effective Date: 7/25/93

AN ACT Relating to on-site sewage additives; amending RCW 70.118.020; adding a new section to chapter 70.118 RCW; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that most additives do not have a positive effect on the operation of on-site systems and can contaminate ground water aquifers, render septic drainfields dysfunctional, and result in costly repairs to homeowners. It is therefore the intent of the legislature to ban the use, sale, and distribution of additives within the state unless an additive has been specifically approved by the department of health.

**Sec. 2.** RCW 70.118.020 and 1991 c 3 s 367 are each amended to read as follows:

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of health, including at least, mound systems, alternating drain fields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a ground water supply.

(4) "Additive" means any commercial product intended to affect the internal performance or aesthetics of an on-site sewage disposal system.

(5) "Department" means the department of health.

(6) "On-site sewage disposal system" means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on the property where it originates or on nearby property under the control of the user where the system is not connected to a public sewer system. For purposes of this chapter, an on-site sewage disposal system does not include indoor plumbing and associated fixtures.

**NEW SECTION.** Sec. 3. A new section is added to chapter 70.118 RCW to read as follows:

(1) After July 1, 1994, a person may not use, sell, or distribute an additive to on-site sewage disposal systems unless such additive has been specifically approved by the department. The department may approve an additive if it can be demonstrated to the satisfaction of the department that the additive has a positive benefit, and no adverse effect, on the operation or performance of an on-site sewage system. Upon written request by an additive manufacturer or distributor for product evaluation, the department may charge a fee sufficient to cover the costs of evaluating the additive, including the development of standards and review procedures.

(2) The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the prohibition on the sale or distribution of additives.

(3) The department is responsible for providing written notification to major distributors and wholesalers of additives of the state-wide prohibition on additives. The notification shall be provided no later than October 1, 1993. Within thirty days of notification from the department, distributors and wholesalers shall provide the same notification to their retail customers. The department shall also provide notification to major distributors and wholesalers of additive products that have been approved.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 322

[Engrossed Substitute House Bill 1758]

### PUBLIC SAFETY DIRECTORS—DEFINED AS LAW ENFORCEMENT OFFICERS FOR RETIREMENT PURPOSES

**Effective Date:** 5/12/93

AN ACT Relating to public safety directors; amending RCW 41.26.030; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 41.26.030 and 1991 sp.s. c 12 s 1 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan I members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan II members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter.

(3) "Law enforcement officer" means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshal or deputy marshal, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers; ~~(and)~~

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection shall not apply to plan II members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties,

or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of the effective date of this act.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection shall not apply to plan II members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection shall not apply to plan II members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971 was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for plan I members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan II members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan I members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be

computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay(~~(:—PROVIDED, That)~~). In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan I members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan I members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan I members.

(20) "Disability retirement" for plan I members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.



(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan I members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopath licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(28) "Plan I" means the law enforcement officers' and fire fighters' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan II" means the law enforcement officers' and fire fighters' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

NEW SECTION. **Sec. 2.** Section 1 of this act shall apply retroactively to January 1, 1993.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 15, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 323**

[Substitute House Bill 1801]

**DENTAL HYGIENISTS—TEMPORARY LICENSES FOR  
HYGIENISTS LICENSED IN ANOTHER STATE**

**Effective Date:** 7/25/93

AN ACT Relating to granting temporary licenses to dental hygienists licensed in another state; adding new sections to chapter 18.29 RCW; adding a new section to chapter 28B.125 RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The legislature declares that the granting of temporary licenses under this act is not intended to be a solution to the shortage of dental hygienists in the state of Washington. The legislature further declares that the long-term solution to these shortages must be addressed by expanding dental hygiene training programs at the state's colleges and universities.

NEW SECTION. Sec. 2. A new section is added to chapter 18.29 RCW to read as follows:

(1) The department shall issue a temporary license without the examination required by this chapter to any applicant who, as determined by the secretary:

(a) Holds a valid license in another state that allows the scope of practice in subsection (3) (a) through (j) of this section;

(b) Is currently engaged in active practice in another state. For the purposes of this section, "active practice" means five hundred sixty hours of practice in the preceding twenty-four months;

(c) Files with the secretary documentation certifying that the applicant:

(i) Has graduated from an accredited dental hygiene school approved by the secretary;

(ii) Has successfully completed the dental hygiene national board examination; and

(iii) Is licensed to practice in another state;

(d) Provides information as the secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW;

(e) Demonstrates to the secretary a knowledge of Washington state law pertaining to the practice of dental hygiene, including the administration of legend drugs;

(f) Pays any required fees; and

(g) Meets requirements for AIDS education.

(2) The term of the temporary license issued under this section is eighteen months and it is nonrenewable.

(3) A person practicing with a temporary license granted under this section has the authority to perform hygiene procedures that are limited to:

(a) Oral inspection and measuring of periodontal pockets;

(b) Patient education in oral hygiene;

(c) Taking intra-oral and extra-oral radiographs;

(d) Applying topical preventive or prophylactic agents;

(e) Polishing and smoothing restorations;

(f) Oral prophylaxis and removal of deposits and stains from the surface of the teeth;

(g) Recording health histories;

(h) Taking and recording blood pressure and vital signs;

(i) Performing subgingival and supragingival scaling; and

(j) Performing root planing.

(4)(a) A person practicing with a temporary license granted under this section may not perform the following dental hygiene procedures unless authorized in (b) or (c) of this subsection:

(i) Give injections of local anesthetic;

(ii) Place restorations into the cavity prepared by a licensed dentist and afterwards carve, contour, and adjust contacts and occlusion of the restoration;

(iii) Soft tissue curettage; or

(iv) Administer nitrous oxide/oxygen analgesia.

(b) A person licensed in another state who can demonstrate substantively equivalent licensing standards in the administration of local anesthetic may receive a temporary endorsement to administer local anesthesia.

(c) A person licensed in another state who can demonstrate substantively equivalent licensing standards in restorative procedures may receive a temporary endorsement for restorative procedures.

**NEW SECTION.** Sec. 3. A new section is added to chapter 18.29 RCW to read as follows:

A person granted a temporary license under this chapter who does not meet the requirements for substantively equivalent licensing standards in restorative or local anesthetic must submit proof of completion of approved education in these procedures before being eligible to take the dental hygiene examination.

**NEW SECTION.** Sec. 4. A new section is added to chapter 18.29 RCW to read as follows:

The secretary in consultation with the dental hygiene examining committee shall develop rules and definitions to implement this chapter.

**NEW SECTION.** Sec. 5. A new section is added to chapter 28B.125 RCW to read as follows:

(1) The state board for community and technical colleges, in coordination with the committee under this chapter, shall identify health professional training needs not currently met by community and technical colleges in the state. It shall recommend creation of new training programs necessary to meet the shortages and identify where such programs shall be located within the state's community and technical college system.

(2) Every publicly funded community and technical college identified by the board in subsection (1) of this section shall include in their biennial budget, and institutional plan, a description of the training programs that will be created by the college or institute to alleviate the shortages.

(3) Health personnel shortages shall be determined in accordance with the health personnel resource plan required by this chapter.

**NEW SECTION.** Sec. 6. Sections 2 and 3 of this act shall expire on January 1, 1998.

**NEW SECTION.** Sec. 7. (1) The department of health shall report to the legislature by December 1, 1996, on the need to continue granting temporary licenses to dental hygienists. The report shall identify alternatives to granting temporary licenses that meet the same goals and objectives, including increasing the number of dental hygienists trained in the state of Washington.

(2) A temporary licenses granted by the department under sections 2 through 4 of this act is valid for the period issued.

Passed the House April 20, 1993.  
Passed the Senate April 12, 1993.  
Approved by the Governor May 12, 1993.  
Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 324

[Engrossed Substitute House Bill 1849]

### AUTOMATED TELLER MACHINES AND NIGHT DEPOSITORIES—SECURITY REQUIREMENTS

Effective Date: 5/12/93

AN ACT Relating to security for automated teller machines and night deposit facilities; adding a new section to chapter 30.04 RCW; adding a new section to chapter 31.12 RCW; adding a new section to chapter 32.04 RCW; adding a new section to chapter 33.04 RCW; adding a new chapter to Title 19 RCW; and declaring an emergency.

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) "Access area" means a paved walkway or sidewalk that is within fifty feet of an automated teller machine or night deposit facility. "Access area" does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) "Access device" as defined in federal reserve board Regulation E, 12 C.F.R. Part 205, promulgated under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq.; or

(b) A key or other mechanism issued by a banking institution to its customer to give the customer access to the banking institution's night deposit facility.

(3) "Automated teller machine" means an electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit, or convenience account. "Automatic teller machine" does not include a device used primarily to facilitate check guarantees or check authorizations, used in connection with the acceptance or dispensing of cash on a person-to-person basis such as by a store cashier, or used for payment of goods and services.

(4) "Banking institution" means a state or federally chartered bank, trust company, savings bank, savings and loan association, and credit union.

(5) "Candlefoot power" means a light intensity of candles on a horizontal plane at thirty-six inches above ground level and five feet in front of the area to be measured.

(6) "Control of an access area or defined parking area" means to have the present authority to determine how, when, and by whom it is to be used, and how it is to be maintained, lighted, and landscaped.

(7) "Defined parking area" means that portion of a parking area open for customer parking that is:

(a) Contiguous to an access area with respect to an automated teller machine or night deposit facility;

(b) Regularly, principally, and lawfully used for parking by users of the automated teller machine or night deposit facility while conducting transactions during hours of darkness; and

(c) Owned or leased by the operator of the automated teller machine or night deposit facility or owned or controlled by the party leasing the automated teller machine or night deposit facility site to the operator. "Defined parking area" does not include a parking area that is not open or regularly used for parking by users of the automated teller machine or night deposit facility who are conducting transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subsection (7)(c) and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the automated teller machine and night deposit facility to be the most directly accessible to the users of the automated teller machine and night deposit facility is a defined parking area.

(8) "Hours of darkness" means the period that commences thirty minutes after sunset and ends thirty minutes before sunrise.

(9) "Night deposit facility" means a receptacle that is provided by a banking institution for the use of its customers in delivering cash, checks, and other items to the banking institution.

(10) "Operator" means a banking institution or other business entity or a person who operates an automated teller machine or night deposit facility.

**NEW SECTION.** Sec. 2. The intent of the legislature in enacting this chapter is to enhance the safety of consumers using automated teller machines and night deposit facilities in Washington without discouraging the siting of automated teller machines and night deposit facilities in locations convenient to consumers' homes and workplaces. Because decisions concerning safety at automated teller machines and night deposit facilities are inherently subjective, the legislature establishes as the standard of care applicable to operators of automated teller machines and night deposit facilities, in connection with user safety, compliance with the objective standards and information requirements of this chapter. It is not the intent of the legislature in enacting this chapter to impose a duty to relocate or modify automated teller machines or night deposit facilities upon the occurrence of a particular event or circumstance, but rather to establish a means for the evaluation of all automated teller machines and night deposit facilities as provided in this chapter. The legislature further recognizes the need for uniformity as to the establishment of safety standards for automated teller machines and night deposit facilities and intends with this chapter to supersede and preempt a rule, regulation, code, or ordinance of a city, county, municipality, or local agency regarding customer safety at automated teller machines and night deposit facilities in Washington.

**NEW SECTION.** **Sec. 3.** On or before July 1, 1994, with respect to an existing installed automated teller machine and night deposit facility in this state, and an automated teller machine or night deposit facility installed after July 1, 1994, the operator shall adopt procedures for evaluating the safety of the automated teller machine or night deposit facility. These procedures must pertain to the following:

(1) The extent to which the lighting for the automated teller machine or night deposit facility complies or will comply with the standards required by section 5 of this act;

(2) The presence of landscaping, vegetation, or other obstructions in the area of the automated teller machine or night deposit facility, the access area, and the defined parking area; and

(3) The incidence of crimes of violence in the immediate neighborhood of the automated teller machine or night deposit facility, as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge.

**NEW SECTION.** **Sec. 4.** (1) An operator of an automated teller machine or night deposit facility installed on or after July 1, 1994, shall comply with section 5 of this act beginning on the date the automated teller machine or night deposit facility is installed. Compliance with section 5 of this act by an operator as to an automated teller machine and night deposit facility existing as of July 1, 1994, is optional until July 1, 1996, and mandatory thereafter. This section applies to an operator of an automated teller machine or night deposit facility only to the extent that the operator controls the access area or defined parking area to be lighted.

(2) If an access area or a defined parking area is not controlled by the operator of an automated teller machine or night deposit facility, and if the person who leased the automated teller machine or night deposit facility site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with section 5 of this act for an automated teller machine or night deposit facility installed on or after July 1, 1994, beginning on the date the automated teller machine or night deposit facility is installed and for an automated teller machine or night deposit facility existing as of July 1, 1994, by or on July 1, 1996.

**NEW SECTION.** **Sec. 5.** The operator, owner, or other person responsible for an automated teller machine or night deposit facility shall provide lighting during hours of darkness with respect to an open and operating automated teller machine or night deposit facility and a defined parking area, access area, and the exterior of an enclosed automated teller machine or night deposit facility installation according to the following standards:

(1) There must be a minimum of ten candlefoot power at the face of the automated teller machine or night deposit facility and extending in an unobstructed direction outward five feet;

(2) There must be a minimum of two candlefoot power within fifty feet from all unobstructed directions from the face of the automated teller machine or night deposit facility. In the event the automated teller machine or night deposit facility is located within ten feet of the corner of the building and the automated teller machine or night deposit facility is generally accessible from the adjacent side, there must be a minimum of two candlefoot power along the first forty unobstructed feet of the adjacent side of the building; and

(3) There must be a minimum of two candlefoot power in that portion of the defined parking area within fifty feet of the automated teller machine or night deposit facility.

**NEW SECTION.** Sec. 6. The issuer of an access device shall furnish a customer receiving the device with a notice of basic safety precautions that the customer should employ while using an automated teller machine or night deposit facility. This information must be furnished by personally delivering or by mailing the information to each customer whose mailing address is in this state for the account to which the access device relates. This information must be furnished for an access device issued on or after July 1, 1994, at or before the time the customer is furnished with his or her access device. For a customer to whom an access device was issued before July 1, 1994, the information must be delivered or mailed to the customer on or before December 31, 1994. Only one notice must be furnished per household, and if an access device is furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for the access devices, only a single notice must be furnished in satisfaction of the notification responsibilities as to all those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq.

**NEW SECTION.** Sec. 7. This chapter does not apply to an automated teller machine or night deposit facility that is:

(1) Located inside of a building, unless it is a freestanding installation that exists for the sole purpose of providing an enclosure for the automated teller machine or night deposit facility;

(2) Located inside a building, except to the extent a transaction can be conducted from outside the building; or

(3) Located in an area, including an access area, building, enclosed space, or parking area that is not controlled by the operator.

**NEW SECTION.** Sec. 8. This chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding customer safety at automated teller machines or night deposit facilities located in this state.

**NEW SECTION.** Sec. 9. Compliance with the objective standards and information requirements of this chapter is prima facie evidence that the operator



of the automated teller machine or night deposit facility in question has provided adequate measures for the safety of users of the automated teller machine or night depository.

**NEW SECTION. Sec. 10.** A new section is added to chapter 30.04 RCW to read as follows:

Chapter 19.— RCW (sections 1 through 9 of this act) applies to automated teller machines and night depositories regulated under this title.

**NEW SECTION. Sec. 11.** A new section is added to chapter 31.12 RCW to read as follows:

Chapter 19.— RCW (sections 1 through 9 of this act) applies to automated teller machines and night depositories regulated under this title.

**NEW SECTION. Sec. 12.** A new section is added to chapter 32.04 RCW to read as follows:

Chapter 19.— RCW (sections 1 through 9 of this act) applies to automated teller machines and night depositories regulated under this title.

**NEW SECTION. Sec. 13.** A new section is added to chapter 33.04 RCW to read as follows:

Chapter 19.— RCW (sections 1 through 9 of this act) applies to automated teller machines and night depositories regulated under this title.

**NEW SECTION. Sec. 14.** Sections 1 through 9 of this act shall constitute a new chapter in Title 19 RCW.

**NEW SECTION. Sec. 15.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 11, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 325

[Substitute House Bill 1910]

### INVENTORY SYSTEM FOR STATE-OWNED OR LEASED FACILITIES

Effective Date: 7/25/93

AN ACT Relating to creating an inventory system for state-owned or leased facilities; adding a new section to chapter 43.82 RCW; adding new sections to chapter 27.34 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 43.82 RCW to read as follows:

(1) The office of financial management shall develop and maintain an inventory system to account for all owned or leased facilities utilized by state government. At a minimum, the inventory system must include the location, type, and size of each facility. In addition, for owned facilities, the inventory system must include the date and cost of original construction and the cost of any major remodeling or renovation. The system must be developed by January 1, 1994, and the initial inventory must be completed by June 30, 1994. The inventory must be updated by June 30 of each subsequent year.

(2) All agencies, departments, boards, commissions, and institutions of the state of Washington shall provide to the office of financial management a complete inventory of owned and leased facilities by May 30, 1994. The inventory must be updated and submitted to the office of financial management by May 30 of each subsequent year. The inventories required under this subsection must be submitted in a standard format prescribed by the office of financial management.

(3) For the purposes of this section, "facilities" means buildings and other structures with walls and a roof. "Facilities" does not mean roads, bridges, parking areas, utility systems, and other similar improvements to real property.

**NEW SECTION. Sec. 2.** It is the purpose of sections 3 and 4 of this act to give authority to the office of archaeology and historic preservation to identify and record all state-owned facilities to determine which of these facilities may be considered historically significant and to require the office to provide copies of the inventory to departments, agencies, and institutions that have jurisdiction over the buildings and sites listed.

**NEW SECTION. Sec. 3.** Unless the context clearly requires otherwise, the following definitions apply throughout section 4 of this act.

(1) "Agency" means the state agency, department, or institution that has ownership of historic property.

(2) "Historic properties" means those buildings, sites, objects, structures, and districts that are listed in or eligible for listing in the National Register of Historic Places.

(3) "Office" means the office of archaeology and historic preservation within the department of community development.

**NEW SECTION. Sec. 4.** (1) By January 2, 1994, the office shall provide each agency with a list of the agency's properties currently listed on the National Register of Historic Places. By January 2, 1995, agencies that own property shall provide to the office a list of those properties that are either at least fifty years old or that may be eligible for listing in the National Register of Historic Places. If funding is available, the office may provide grants to state agencies to assist in the development of the agency's list. By June 30, 1995, the office shall compile and disseminate an inventory of state-owned historic properties.

(2) The office shall provide technical information to agency staff involved with the identification of historic properties, including the criteria for facilities to be placed on the National Register of Historic Places.

**NEW SECTION.** Sec. 5. Sections 3 and 4 of this act are each added to chapter 27.34 RCW.

Passed the House April 24, 1993.

Passed the Senate April 22, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 326

[Substitute Senate Bill 5404]

### HAZARDOUS MATERIALS—COSTS OF REMEDIAL ACTION—PRIVATE RIGHT OF ACTION TO RECOVER

Effective Date: 5/12/93

AN ACT Relating to confirming a private right of action or right of contribution under the model toxic control act; adding a new section to chapter 70.105D RCW; and declaring an emergency. Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. A new section is added to chapter 70.105D RCW to read as follows:

Except as provided in RCW 70.105D.040(4)(d), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of the effective date of this act, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to the effective date of this act, this section applies retroactively, but in all other respects it applies prospectively.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 17, 1993.  
Passed the House April 5, 1993.  
Approved by the Governor May 12, 1993.  
Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 327**

[Substitute Senate Bill 5134]

**NONPROFIT ORGANIZATIONS—PROPERTY TAX EXEMPTION NOT LOST  
FOR LIMITED FUND-RAISING USES**

**Effective Date: 7/25/93**

AN ACT Relating to property taxation of real or personal property owned by nonprofit organizations, associations, and corporations in connection with a public assembly hall or meeting place or in connection with property owned by veterans and societies of veterans; and amending RCW 84.36.037 and 84.36.030.

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

**Sec. 1.** RCW 84.36.037 and 1987 c 505 s 80 are each amended to read as follows:

(1) Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section includes the building or buildings, the land under the buildings, and an additional area necessary for parking, not exceeding a total of one acre: PROVIDED, That for property essentially unimproved except for restroom facilities and structures on such property which has been used primarily for annual community celebration events for at least ten years, such exempt property shall not exceed twenty-nine acres.

(2) To qualify for this exemption the property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

(3) The use of the property for pecuniary gain or to promote business activities, except ~~((fund-raising activities conducted by a nonprofit organization))~~ as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by:

(a) The collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses created by the user.

(b) Fund-raising activities conducted by a nonprofit organization.

(c) The use of the property for pecuniary gain for periods of not more than three days in a year.

(d) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(4) The department of revenue shall narrowly construe this exemption.

**Sec. 2.** RCW 84.36.030 and 1990 c 283 s 6 are each amended to read as follows:

The following real and personal property shall be exempt from taxation:

(1) Property owned by nonprofit organizations or associations, organized and conducted for nonsectarian purposes, which shall be used for character-building, benevolent, protective or rehabilitative social services directed at persons of all ages. The sale of donated merchandise shall not be considered a commercial use of the property under this section if the proceeds are devoted to the furtherance of the purposes of the selling organization or association as specified in this paragraph.

(2) Property owned by any nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches or their qualified representatives, which is utilized as a camp facility if used for organized and supervised recreational activities and church purposes as related to such camp facilities. The exemption provided by this paragraph shall apply to a maximum of two hundred acres of any such camp as selected by the church, including buildings and other improvements thereon.

(3) Property, including buildings and improvements required for the maintenance and safeguarding of such property, owned by nonprofit organizations or associations engaged in character building of boys and girls under eighteen years of age, and used for such purposes and uses, provided such purposes and uses are for the general public good: PROVIDED, That if existing charters provide that organizations or associations, which would otherwise qualify under the provisions of this paragraph, serve boys and girls up to the age of twenty-one years, then such organizations or associations shall be deemed qualified pursuant to this section.

(4) Property owned by all organizations and societies of veterans of any war of the United States, recognized as such by the department of defense, which shall have national charters, and which shall have for their general purposes and objects the preservation of the memories and associations incident to their war service and the consecration of the efforts of their members to mutual helpfulness and to patriotic and community service to state and nation. To be exempt such property must be used in such manner as may be reasonably necessary to carry out the purposes and objects of such societies.

The use of the property for pecuniary gain or to promote business activities, except ~~((fund-raising activities conducted by a nonprofit organization))~~ as provided in this subsection (4), nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by:

(a) The collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses.

(b) Fund-raising activities conducted by a nonprofit organization.

(c) The use of the property for pecuniary gain for periods of not more than three days in a year.

(d) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(5) Property owned by all corporations, incorporated under any act of congress, whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(6) Property owned by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans.

(7) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805.

Passed the Senate March 12, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 328

[Senate Bill 5245]

### BLOOD OR BREATH TEST FOR ALCOHOL—TIME LIMITS FOR CONDUCTING Effective Date: 7/25/93

AN ACT Relating to the time limitation on the analysis of blood and breath alcohol; and amending RCW 46.61.502 and 46.61.504.

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

**Sec. 1.** RCW 46.61.502 and 1987 c 373 s 2 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state (~~(while)~~):

~~((+))~~ (a) And the person has 0.10 grams or more of alcohol per two hundred ten liters of breath within two hours after driving, as shown by analysis of the person's breath made under RCW 46.61.506; or

~~((2))~~ (b) And the person has 0.10 percent or more by weight of alcohol in the person's blood within two hours after driving, as shown by analysis of the person's blood made under RCW 46.61.506; or

~~((3))~~ (c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

~~((4))~~ (d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1) (a) and (b) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.10 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more of alcohol in the person's blood, pursuant to subsection (1) (a) and (b) of this section, and may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to subsection (1) (c) and (d) of this section.

Sec. 2. RCW 46.61.504 and 1987 c 373 s 3 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state (~~(while)~~):

~~((+))~~ (a) And the person has 0.10 grams or more of alcohol per two hundred ten liters of breath within two hours after being in actual physical control of a motor vehicle, as shown by analysis of the person's breath made under RCW 46.61.506; or

~~((2))~~ (b) And the person has 0.10 percent or more by weight of alcohol in the person's blood within two hours after being in actual physical control of a motor vehicle, as shown by analysis of the person's blood made under RCW 46.61.506; or

~~((3))~~ (c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

~~((4))~~ (d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1) (a) and (b) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of a motor vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.10 or more within two hours after being in actual physical control of a motor vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged actual physical control of a motor vehicle may be used as evidence that within two hours of the alleged actual physical control of a motor vehicle, a person had 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more of alcohol in the person's blood, pursuant to subsection (1) (a) and (b) of this section, and may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to subsection (1) (c) and (d) of this section.

Passed the Senate April 20, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 329

[Senate Bill 5387]

### WATER POLLUTION CONTROL REVOLVING FUND CREDITED WITH EARNINGS OF SURPLUS FUNDS INVESTMENTS

Effective Date: 5/12/93

AN ACT Relating to investment earnings of the water pollution control revolving fund; amending RCW 90.50A.020 and 43.84.092; and declaring an emergency.

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

**Sec. 1.** RCW 90.50A.020 and 1992 c 235 s 9 are each amended to read as follows:

(1) The water pollution control revolving fund is hereby established in the state treasury. Moneys in this fund may be spent only after legislative



appropriation. Moneys in the fund may be spent only in a manner consistent with this chapter.

(2) The water pollution control revolving fund shall consist of:

(a) All capitalization grants provided by the federal government under the federal water quality act of 1987;

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund;

(f) Any other fee or charge levied in conjunction with administration of the fund; and

(g) Any new funds as a result of leveraging.

(3) The state treasurer may invest and reinvest moneys in the water pollution control revolving fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the water pollution control revolving fund.

**Sec. 2.** RCW 43.84.092 and 1992 c 235 s 4 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the Eastern Washington University capital projects account, the federal forest revolving account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local sales and use tax account, the medical aid account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan I account, the public employees' retirement system plan II account,

the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan I account, the teachers' retirement system plan II account, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' relief and pension principal account, the volunteer fire fighters' relief and pension administrative account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan I retirement account, the Washington law enforcement officers' and fire fighters' system plan II retirement account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (2)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway construction stabilization account, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the special category C account, the state patrol highway account, the transfer relief account, the transportation capital facilities account, the transportation equipment fund, the transportation fund, the transportation improvement account, and the urban arterial trust account.

(3) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 17, 1993.  
Passed the House April 6, 1993.  
Approved by the Governor May 12, 1993.  
Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 330**

[Senate Bill 5523]

**DISTRICT COURTS—APPOINTMENT OF JUDGES PRO TEMPORE****Effective Date: 7/25/93**

AN ACT Relating to district court judges pro tempore; and amending RCW 3.34.130.

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

**Sec. 1.** RCW 3.34.130 and 1986 c 161 s 4 are each amended to read as follows:

(1) Each district court shall designate one or more persons as judge pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a district judge. The qualifications of a judge pro tempore shall be the same as for a district judge, except that with respect to RCW 3.34.060(1), the person appointed need only be a registered voter of the state. A district that has a population of not more than ten thousand and that has no person available who meets the qualifications under RCW 3.34.060(2) (a) or (b), may appoint as a pro tempore judge a person who has taken and passed the qualifying examination for the office of district judge as is provided by rule of the supreme court. A judge pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority. For each day that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the judge in whose place he or she serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: PROVIDED, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves while a district judge is using sick leave granted in accordance with RCW 3.34.100.

(2) The legislature may appropriate money for the purpose of reimbursing counties for the salaries of judges pro tempore for certain days in excess of thirty worked per year that the judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (1) of this section. No later than September 1 of each year, each county treasurer shall certify to the administrator for the courts for the year ending the preceding June 30, the number of days in excess of thirty that any judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (1) of this section. Upon receipt of the certification,

the administrator for the courts shall reimburse the county from money appropriated for that purpose.

Passed the Senate April 20, 1993.

Passed the House April 7, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 331

[Substitute Senate Bill 5567]

### EMERGENCY MEDICAL SERVICE DISTRICT VOLUNTEERS—BENEFITS UNDER VOLUNTEER FIRE FIGHTERS RELIEF AND PENSION FUND

Effective Date: 7/25/93

AN ACT Relating to emergency medical service district volunteer benefits; amending RCW 41.24.010; and adding new sections to chapter 41.24 RCW.

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

**Sec. 1.** RCW 41.24.010 and 1989 c 91 s 8 are each amended to read as follows:

As used in this chapter:

"Municipal corporation" or "municipality" includes any city or town, fire protection district, or any water, irrigation, or other district, authorized by law to afford emergency medical services or protection to life and property within its boundaries from fire.

"Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer fire fighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality; PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

"Fire fighter" includes any fire fighter or emergency worker who is a member of any fire department of any municipality but shall not include full time, paid fire fighters who are members of the Washington law enforcement officers' and fire fighters' retirement system, with respect to periods of service rendered in such capacity.

"Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include full-time, paid emergency medical service personnel who are members of the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

"Performance of duty" shall be construed to mean and include any work in and about company quarters or any fire station or any other place under the direction or general orders of the chief or other officer having authority to order

such member to perform such work; responding to, working at, or returning from an alarm of fire; drill; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department.

"State board" means the state board for volunteer fire fighters created herein.

"Board of trustees" means a board of trustees created under RCW 41.24.060 or, for matters affecting an emergency worker, an emergency medical service district board of trustees created under section 2 of this act.

"Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

NEW SECTION. Sec. 2. In every county maintaining a regularly organized emergency medical service district there is hereby created an emergency medical service district board of trustees for the administration of this chapter. The emergency medical service district board shall consist of three of the members of the county legislative authority or their designees, the county auditor or the auditor's designee, the head of the emergency medical service district, and one emergency worker from the emergency medical service district to be elected by the emergency workers of the emergency medical service district for a term of one year and annually thereafter.

NEW SECTION. Sec. 3. The chair of the board of county commissioners shall be chair of the emergency medical service district board of trustees, and the county clerk shall be the secretary-treasurer of the emergency medical service district board of trustees. The secretary shall keep a public record of all proceedings, of all receipts and disbursements made by the emergency medical service district board of trustees and shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of said fund in the county, the record to be placed on file in the county. Such forms as shall be necessary for the proper administration of this fund and of making the reports required hereunder shall be provided by the state board.

NEW SECTION. Sec. 4. The state board shall set the amount consistent with the most recent valuation of the volunteer fire fighters relief and pension fund to be paid for the purposes of this chapter by emergency medical service districts for emergency worker relief and pension fees and by emergency workers for emergency worker pensions. The fees set under this section are subject to the other provisions of this chapter.

NEW SECTION. Sec. 5. Sections 2 through 4 of this act are each added to chapter 41.24 RCW.

Passed the Senate April 18, 1993.

Passed the House April 7, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

CHAPTER 332

[Senate Bill 5851]

JOINT LEGISLATIVE SYSTEMS COMMITTEE MEMBERSHIP REDUCED

Effective Date: 7/25/93

AN ACT Relating to the joint legislative systems committee; and amending RCW 44.68.020.

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

Sec. 1. RCW 44.68.020 and 1986 c 61 s 2 are each amended to read as follows:

(1) The joint legislative systems committee is created to oversee the direction of the information processing and communications systems of the legislature and to enforce the policies, procedures, and standards established under this chapter. The systems committee consists of ~~((eight))~~ four members as follows:

- (a) ~~((The speaker of the house of representatives;~~
- ~~(b) The minority leader of the house of representatives;~~
- ~~(e)))~~ A member from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house of representatives;
- ~~((d) The majority leader of the senate;~~
- ~~(e) The minority leader of the senate;))~~ and
- ~~((f))~~ (b) A member from each of the two largest caucuses in the senate, appointed by the majority leader of the senate.

~~(2) ((The initial members of the systems committee shall be appointed within five days after March 12, 1986, and shall serve until their successors are appointed and qualified in the 1987 regular legislative session. After the initial terms;))~~ Members shall serve two-year terms, beginning with their appointment in the regular legislative session held in an odd-numbered year and continuing until their successors are appointed and qualified. In case of a vacancy, the original appointing authority shall appoint another member of the same party as the vacating member.

(3) The systems committee shall choose its own presiding officer and other necessary officers from among its membership, and shall make rules for orderly procedure.

Passed the Senate February 18, 1993.  
 Passed the House April 24, 1993.  
 Approved by the Governor May 12, 1993.  
 Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 333

[Substitute Senate Bill 5971]

CHILD NUTRITION PROGRAMS—REQUIREMENTS AND ADMINISTRATION  
BY SUPERINTENDENT OF PUBLIC INSTRUCTION

Effective Date: 7/25/93

AN ACT Relating to child nutrition programs; amending RCW 28A.235.140 and 28A.235.100; adding new sections to chapter 28A.235 RCW; and creating a new section.

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

**Sec. 1.** RCW 28A.235.140 and 1989 c 239 s 2 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Free or reduced-price lunches" means lunches served by a school district that qualify for federal reimbursement as free or reduced-price lunches under the national school lunch program.

(b) "School breakfast program" means a program meeting federal requirements defined in 42 U.S.C. Sec. 1773.

(c) "Severe-need school" means a school that qualifies for a severe-need school reimbursement rate from federal funds for school breakfasts served to children from low-income families.

(2) School districts shall be required to develop and implement plans for a school breakfast program in severe-need schools, pursuant to the schedule in this section. For the second year prior to the implementation of the district's school breakfast program, and for each subsequent school year, each school district shall submit data enabling the superintendent of public instruction to determine which schools within the district will qualify as severe-need schools. In developing its plan, each school district shall consult with an advisory committee including school staff and community members appointed by the board of directors of the district.

(3) Using district-wide data on school lunch participation during the 1988-89 school year, the superintendent of public instruction shall adopt a schedule for implementation of school breakfast programs in severe-need schools as follows:

(a) School districts where at least forty percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1990. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1990-91 school year and in each school year thereafter.

(b) School districts where at least twenty-five but less than forty percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1991. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1991-92 school year and in each school year thereafter.

(c) School districts where less than twenty-five percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1992. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1992-93 school year and in each school year thereafter.

(d) School districts that did not offer a school lunch program in the 1988-89 school year are encouraged to implement such a program and to provide a school breakfast program in all severe-need schools when eligible.

(4) The requirements in this section shall lapse if the federal reimbursement rate for breakfasts served in severe-need schools is eliminated.

(5) Students who do not meet family-income criteria for free breakfasts shall be eligible to participate in the school breakfast programs established under this section, and school districts may charge for the breakfasts served to these students. Requirements that school districts have school breakfast programs ((established)) under this section ((shall be supported entirely by federal funds and commodities, charges to students, and other local resources available for this purpose, and)) shall not create or imply any state funding obligation for these costs. The legislature does not intend to include these programs within the state's obligation for basic education funding under Article IX of the Constitution.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.235 RCW to read as follows:

State funds received by school districts under this chapter for school breakfast and lunch programs shall be used to support the operating costs of the program, including labor, unless specific appropriations for nonoperating costs are provided.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.235 RCW to read as follows:

(1) To the extent funds are appropriated, the superintendent of public instruction may award grants to school districts to increase participation in school breakfast and lunch programs, to improve program quality, and to improve the equipment and facilities used in the programs. School districts shall demonstrate that they have applied for applicable federal funds before applying for funds under this subsection.

(2) To the extent funds are appropriated, the superintendent of public instruction shall increase the state support for school breakfasts and lunches.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.235 RCW to read as follows:

(1) The superintendent of public instruction shall administer funds for the federal summer food service program.

(2) The superintendent of public instruction may award grants, to the extent funds are appropriated, to eligible organizations to help start new summer food



service programs for children or to help expand summer food services for children.

**Sec. 5.** RCW 28A.235.100 and 1990 c 33 s 245 are each amended to read as follows:

The superintendent of public instruction shall have power to ~~((promulgate))~~ adopt rules ~~((and regulations))~~ as may be necessary to effectuate the purposes of ~~((RCW 28A.235.040 through 28A.235.110))~~ this chapter.

**NEW SECTION. Sec. 6.** If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act is null and void.

Passed the Senate April 25, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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## CHAPTER 334

[Engrossed House Bill 1708]

### COMMISSION ON STUDENT LEARNING—REVISIONS

Effective Date: 5/12/93

AN ACT Relating to the commission on student learning; amending RCW 28A.630.885; and declaring an emergency.

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

**Sec. 1.** RCW 28A.630.885 and 1992 c 141 s 202 are each amended to read as follows:

~~((2))~~ (1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify what all students need to know and be able to do based on the student learning goals of the governor's council on education reform and funding, to develop student assessment and school accountability systems, and to take other steps necessary to develop a performance-based education system. The commission shall include three members of the state board of education, three members appointed by the governor before July 1, 1992, and ~~((three))~~ five members appointed no later than ~~((February))~~ June 1, 1993, by the governor elected in the November 1992 election. The governor shall appoint a chair from the commission members, and fill any vacancies of gubernatorial appointments that may occur. The state board of education shall fill any vacancies of state board of education appointments that may occur. In making the appointments, educators, business leaders, and parents shall be represented, and nominations from state-wide education, business, and parent organizations shall be requested. Efforts shall be made to ensure that the commission reflects the cultural diversity of the state's K-12 student population and that the major geographic regions in the state are represented. Appointees

shall be qualified individuals who are supportive of educational restructuring, who have a positive record of service, and who will devote sufficient time to the responsibilities of the commission to ensure that the objectives of the commission are achieved.

~~((3))~~ The commission shall begin its substantive work subject to subsection ~~(1)~~ of this section.

~~(4))~~ (2) The commission shall establish technical advisory committees. Membership of the technical advisory committees shall include, but not necessarily be limited to, professionals from the office of the superintendent of public instruction and the state board of education, and other state and local educational practitioners and student assessment specialists.

~~((5))~~ (3) The commission, with the assistance of the technical advisory committees, shall:

(a) Identify what all elementary and secondary students need to know and be able to do. At a minimum, these essential academic learning requirements shall include reading, writing, speaking, science, history, geography, mathematics, and critical thinking. In developing these essential academic learning requirements, the commission shall incorporate the student learning goals identified by the council on education reform and funding;

(b) By December 1, 1995, present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the elementary grades designed to determine if each student has mastered the essential academic learning requirements identified in (a) of this subsection. The academic assessment system shall include a variety of methodologies, including performance-based measures. The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who do not master the essential academic learning requirements. Mastery of each component of the essential academic learning requirements shall be required before students progress in subsequent components of the essential academic learning requirements. The state board of education and superintendent of public instruction shall implement the elementary academic assessment system beginning in the 1996-97 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. The state board of education and superintendent of public instruction may modify the academic assessment system, as needed, in subsequent school years;

(c) By December 1, 1996, present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the secondary grades designed to determine if each student has mastered the essential academic learning requirements identified for secondary students in (a) of this subsection. The academic assessment system shall use a variety of methodologies, including performance-based measures, to determine if students have mastered the essential academic learning requirements, and shall lead to a

certificate of mastery. The certificate of mastery shall be required for graduation. The assessment system shall be designed so that the results are used by educators to evaluate instructional practices, and to initiate appropriate educational support for students who do not master the essential academic learning requirements. The commission shall recommend to the state board of education whether the certificate of mastery should take the place of the graduation requirements or be required for graduation in addition to graduation requirements. The state board of education and superintendent of public instruction shall implement the secondary academic assessment system beginning in the 1997-98 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. The state board of education and superintendent of public instruction may modify the assessment system, as needed, in subsequent school years;

(d) Consider methods to address the unique needs of special education students when developing the assessments in (b) and (c) of this subsection;

(e) Develop strategies that will assist educators in helping students master the essential academic learning requirements;

(f) Establish a center the primary role of which is to plan, implement, and evaluate a high quality professional development process. The quality schools center shall: Have an advisory council composed of educators, parents, and community and business leaders; use best practices research regarding instruction, management, curriculum development, and assessment; coordinate its activities with the office of the superintendent of public instruction and the state board of education; employ and contract with individuals who have a commitment to quality reform; prepare a six-year plan to be updated every two years; and be able to accept resources and funding from private and public sources;

(g) Develop recommendations for the repeal or amendment of federal, state, and local laws, rules, budgetary language, regulations, and other factors that inhibit schools from adopting strategies designed to help students achieve the essential academic learning requirements;

(h) Develop recommendations on the time, support, and resources, including technical assistance, needed by schools and school districts to help students achieve the essential academic learning requirements. These recommendations shall include an estimate for the legislature, superintendent of public instruction, and governor on the expected cost of implementing the elementary and secondary academic assessment systems during the 1995-97 biennium and beyond;

(i) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements that would assist schools in adopting strategies designed to help students achieve the essential academic learning requirements;

(j) By December 1, 1996, recommend to the legislature, state board of education, and superintendent of public instruction a state-wide accountability system to evaluate accurately and fairly the level of learning occurring in

individual schools and school districts. The commission also shall recommend to the legislature steps that should be taken to assist school districts and schools in which learning is significantly below expected levels of performance as measured by the academic assessment systems established under this section;

(k) Report annually by December 1st to the legislature and the state board of education on the progress, findings, and recommendations of the commission; and

(l) Complete other tasks, as appropriate.

~~((6))~~ (4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

~~((7))~~ (5) The commission shall seek advice broadly from the public and all interested educational organizations in the conduct of its work, including holding periodic regional public hearings.

~~((8))~~ (6) The commission shall select an entity to provide staff support and the office of financial management shall contract with that entity. The commission may direct the office of financial management to enter into subcontracts with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations.

~~((9))~~ (7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

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**CHAPTER 335**

[Engrossed Substitute House Bill 1820]

**SCHOOL-TO-WORK TRANSITIONS PROGRAM**

**Effective Date:** 5/12/93

AN ACT Relating to school-to-work transitions; amending RCW 28A.630.862, 28A.630.864, 28A.630.866, 28A.630.868, 28A.630.870, 28A.630.874, 28A.630.876, 28A.630.878, and 28A.630.880; adding a new section to chapter 28A.630 RCW; creating new sections; repealing RCW 28A.630.860; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that demonstrated relevancy and practical application of school work is essential to improving student learning and to increasing the ability of students to transition successfully to the world of work. Employers have an increasing need for highly skilled

people whether they are graduating from high school, a community college, a four-year university, or a technical college.

(2) The legislature further finds that the school experience must prepare students to make informed career direction decisions at appropriate intervals in their educational progress. The elimination of rigid tracking into educational programs will increase students' posthigh school options and will expose students to a broad range of interrelated career and educational opportunities.

(3) The legislature further finds that student motivation and performance can be greatly increased by the demonstration of practical application of course work content and its relevancy to potential career directions.

(4) The legislature further finds that secondary schools should provide students with multiple, flexible educational pathways. Each educational pathway should:

(a) Prepare students to demonstrate both core competencies common for all students and competencies in a career or interest area;

(b) Integrate academic and vocational education into a single curriculum; and

(c) Provide both classroom and workplace experience.

(5) The purpose of RCW 28A.630.862 through 28A.630.880 and section 11 of this act is to equip students with improved school-to-work transition opportunities through the establishment of school-to-work transition model projects throughout the state.

**Sec. 2.** RCW 28A.630.862 and 1992 c 137 s 2 are each amended to read as follows:

There is established in the office of the superintendent of public instruction ~~((an academic and vocational integration development))~~ a school-to-work transitions program which shall fund and coordinate ~~((pilot))~~ projects to develop inodel secondary school ~~((projects))~~ programs. The projects shall combine academic and vocational education into a single instructional system that is responsive to the educational needs of all students in secondary schools and shall provide multiple educational pathway options for all secondary students. Goals of the projects within the program shall include at a minimum:

(1) Integration of vocational and academic instructional curriculum into a single curriculum;

(2) Providing each student with a choice of multiple, flexible educational pathways based on the student's career or interest area;

(3) Emphasis on increased vocational~~((personal))~~ and academic guidance and counseling for students as an essential component of the student's high school experience;

~~((3))~~ (4) Development of student essential academic learning requirements, methods of accurately measuring student performance, and goals for improved student learning;

(5) Partnership with local employers and employees to incorporate work sites as part of work-based learning experiences;

(6) Active participation of educators in the planning, implementation, and operation of the project, including increased opportunities for professional development and in-service training; and

~~((4))~~ (7) Active participation by employers, private and public community service providers, parents, and community members in the development and operation of the project.

**Sec. 3.** RCW 28A.630.864 and 1992 c 137 s 3 are each amended to read as follows:

(1) The superintendent of public instruction shall develop a process for schools or school districts to apply to participate in the ~~((academic and vocational integration development))~~ school-to-work transitions program. The office of the superintendent of public instruction shall review and select projects for grant awards, and monitor and evaluate the ~~((academic and vocational integration development))~~ program.

(2) The superintendent of public instruction, in selecting projects for grant awards, shall give additional consideration to schools or school districts whose proposals include collaboration with middle schools or junior high schools to develop school-to-work transition objectives. Middle school or junior high school programs may include career awareness and exploration, preparation for school-to-school transition, and preparation for educational pathway decisions.

(3) The superintendent of public instruction, in selecting projects for grant awards, shall give additional consideration to schools or school districts whose proposals include a tech prep site selected under P.L. 101-392 or other articulation agreements with a community or technical college.

(4) The superintendent of public instruction, in selecting projects for grant awards, shall give additional consideration to schools or school districts whose proposals include the following elements: Paid student employment in an occupational area with growing labor market demand, instruction on the job from a mentor, demonstration of competency standards for program completion, and a contract to be signed by the participating student, the student's parent or legal guardian, the participating employer, and an education representative.

(5) The superintendent of public instruction and the state board of education may develop a process for teacher preparation programs to apply to participate in the school-to-work transitions program. The office of the superintendent of public instruction and the state board of education may review and select projects for grant awards. Teacher preparation grants shall be used to improve teacher preparation in school-to-work transitions, including course work related to integrated curriculum, tech prep concepts, updating technical skills, improving school and private sector partnerships, and assessing students.

**Sec. 4.** RCW 28A.630.866 and 1992 c 137 s 4 are each amended to read as follows:

The superintendent of public instruction shall appoint a ten-member task force on ~~((academic and vocational integration))~~ school-to-work transitions. The

task force shall include at least one representative from the work force training and education coordinating board and the state board for community and technical colleges. The task force shall advise the superintendent of public instruction in the development of the process for applying to participate in the ~~((academic and vocational integration development))~~ school-to-work transitions program, in the review and selection of projects under RCW 28A.630.864, and the monitoring and evaluation of the projects.

**Sec. 5.** RCW 28A.630.868 and 1992 c 137 s 6 are each amended to read as follows:

(1) The superintendent of public instruction shall administer RCW 28A.630.860 through RCW 28A.630.880.

(2) The ~~((academic and vocational integration development))~~ school-to-work transitions projects may be conducted for up to six years, if funds are provided.

**Sec. 6.** RCW 28A.630.870 and 1992 c 137 s 7 are each amended to read as follows:

(1) The superintendent of public instruction may accept, receive, and administer for the purposes of RCW 28A.630.860 through 28A.630.880 such gifts, grants, and contributions as may be provided from public and private sources for the purposes of RCW 28A.630.860 through 28A.630.880.

(2) The ~~((academic and vocational integration development))~~ school-to-work transitions program account is hereby established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received under this section. Moneys in the account may be spent only for the purposes of 28A.630.860 through 28A.630.880. Disbursements from this account shall be on the authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

**Sec. 7.** RCW 28A.630.874 and 1992 c 137 s 9 are each amended to read as follows:

(1) The superintendent of public instruction, in coordination with the state board of education, the state board for community and technical colleges, the work force training and education coordinating board, and the higher education coordinating board, shall provide technical assistance to selected schools and shall develop a process that coordinates and facilitates linkages among participating school districts, secondary schools, junior high schools, middle schools, technical colleges, and colleges and universities.

(2) The superintendent of public instruction and the state board of education may adopt rules under chapter 34.05 RCW as necessary to implement its duties under RCW 28A.630.860 through RCW 28A.630.880.

**Sec. 8.** RCW 28A.630.876 and 1992 c 137 s 10 are each amended to read as follows:

(1) The superintendent of public instruction shall report to the education committees of the legislature on the progress of the schools for the ~~((academic and vocational integration development))~~ school-to-work transitions program by December 15 of each odd-numbered year.

(2) Each school district selected to participate in the academic and vocational integration development program shall submit an annual report to the superintendent of public instruction on the progress of the ~~((pilot))~~ project as a condition of receipt of continued funding.

**Sec. 9.** RCW 28A.630.878 and 1992 c 137 s 11 are each amended to read as follows:

The superintendent of public instruction, through the state clearinghouse for education information, shall collect and disseminate to all school districts and other interested parties information about the ~~((academic and vocational integration development pilot))~~ school-to-work transitions projects.

**Sec. 10.** RCW 28A.630.880 and 1992 c 137 s 12 are each amended to read as follows:

RCW 28A.630.860 through 28A.630.880 may be known and cited as the ~~((academic and vocational integration development))~~ school-to-work transitions program.

**NEW SECTION. Sec. 11.** A new section is added to chapter 28A.630 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.630.862 through 28A.630.880.

(1) "Integration of vocational and academic instruction" means an educational program that combines vocational and academic concepts into a single curriculum to increase the relevancy of course work, to strengthen and increase academic standards, and to enable students to apply knowledge and skills to career and educational objectives.

(2) "School-to-work transition" means a restructuring effort which provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests.

(3) "Work-based learning" means a competency-based educational experience that coordinates and integrates classroom instruction with structured, work site employment in which the student receives occupational training that advances student knowledge and skills in essential academic learning requirements.

**NEW SECTION. Sec. 12.** RCW 28A.630.860 and 1992 c 137 s 1 are each repealed.

**NEW SECTION. Sec. 13.** If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act is null and void.



**NEW SECTION. Sec. 14.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 11, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.

## CHAPTER 336

[Engrossed Substitute House Bill 1209]

### EDUCATION REFORM—IMPROVEMENT OF STUDENT ACHIEVEMENT

Effective Date: 7/25/93

AN ACT Relating to education; amending RCW 28A.150.210, 28A.630.885, 28A.415.250, 28A.405.140, 28A.300.130, 28A.630.878, 28A.410.030, 28A.225.220, 28A.195.010, and 28A.200.010; amending 1992 c 141 s 509 (uncodified); adding new sections to chapter 28A.630 RCW; adding a new section to chapter 28A.320 RCW; adding a new section to chapter 28A.305 RCW; adding a new section to chapter 28A.415 RCW; adding new sections to chapter 28A.405 RCW; adding new sections to chapter 28A.300 RCW; adding a new section to chapter 28A.310 RCW; adding a new section to chapter 70.190 RCW; adding a new chapter to Title 28A RCW; creating new sections; repealing RCW 28A.630.884; repealing 1992 c 141 s 505; repealing 1992 c 141 s 501; providing an effective date; and providing expiration dates.

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

**NEW SECTION. Sec. 1.** The legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students, that includes high expectations for all students, and that provides more flexibility for school boards and educators in how instruction is provided.

The legislature further finds that improving student achievement will require:

(1) Establishing what is expected of students, with standards set at internationally competitive levels;

(2) Parents to be primary partners in the education of their children, and to play a significantly greater role in local school decision making;

(3) Students taking more responsibility for their education;

(4) Time and resources for educators to collaboratively develop and implement strategies for improved student learning;

(5) Making instructional programs more relevant to students' future plans;

(6) All parties responsible for education to focus more on what is best for students; and

(7) An educational environment that fosters mutually respectful interactions in an atmosphere of collaboration and cooperation.

It is the intent of the legislature to provide students the opportunity to achieve at significantly higher levels, and to provide alternative or additional instructional opportunities to help students who are having difficulty meeting the essential academic learning requirements in RCW 28A.630.885.

It is also the intent of the legislature that students who have met or exceeded the essential academic learning requirements be provided with alternative or additional instructional opportunities to help advance their educational experience.

The provisions of chapter . . . , Laws of 1993 (this act) shall not be construed to change current state requirements for students who receive home-based instruction under chapter 28A.200 RCW, or for students who attend state-approved private schools under chapter 28A.195 RCW.

## PART I STUDENT LEARNING GOALS

**Sec. 101.** RCW 28A.150.210 and 1977 ex.s. c 359 s 2 are each amended to read as follows:

The goal of the Basic Education Act for the schools of the state of Washington set forth in this ((1977 amendatory act)) chapter shall be to provide students with the opportunity to ((achieve those skills which are generally recognized as requisite to learning. Those skills shall include the ability:

(1) ~~To distinguish, interpret and make use of words, numbers and other symbols, including sound, colors, shapes and textures;~~

(2) ~~To organize words and other symbols into acceptable verbal and nonverbal forms of expression, and numbers into their appropriate functions;~~

(3) ~~To perform intellectual functions such as problem solving, decision making, goal setting, selecting, planning, predicting, experimenting, ordering and evaluating; and~~

(4) ~~To use various muscles necessary for coordinating physical and mental functions))~~ become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to provide opportunities for all students to develop the knowledge and skills essential to:

(1) Read with comprehension, write with skill, and communicate effectively and responsibly in a variety of ways and settings;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.

NEW SECTION. **Sec. 102.** Section 101 of this act shall take effect September 1, 1994.

**PART II**  
**COMMISSION ON STUDENT LEARNING**

NEW SECTION. **Sec. 201.** A new section is added to chapter 28A.630 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.630.885 and 28A.300.130.

(1) "Commission" means the commission on student learning created in RCW 28A.630.885.

(2) "Student learning goals" mean the goals established in RCW 28A.150.210.

(3) "Essential academic learning requirements" means more specific academic and technical skills and knowledge, based on the student learning goals, as determined under RCW 28A.630.885(3)(a). Essential academic learning requirements shall not limit the instructional strategies used by schools or school districts or require the use of specific curriculum.

(4) "Performance standards" or "standards" means the criteria used to determine if a student has successfully learned the specific knowledge or skill being assessed as determined under RCW 28A.630.885(3)(b). The standards should be set at internationally competitive levels.

(5) "Assessment system" or "student assessment system" means a series of assessments used to determine if students have successfully learned the essential academic learning requirements. The assessment system shall be developed under RCW 28A.630.885(3)(b).

(6) "Performance-based education system" means an education system in which a significantly greater emphasis is placed on how well students are learning, and significantly less emphasis is placed on state-level laws and rules that dictate how instruction is to be provided. The performance-based education system does not require that schools use an outcome-based instructional model. Decisions regarding how instruction is provided are to be made, to the greatest extent possible, by schools and school districts, not by the state.

**Sec. 202.** RCW 28A.630.885 and 1992 c 141 s 202 are each amended to read as follows:

~~((2))~~ (1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify ~~((what))~~ the knowledge and skills all public school students need to know and be able to do based on the student learning goals ~~((of the governor's council on education reform and funding))~~ in RCW 28A.150.210, to develop student assessment and school accountability systems, and to take other steps necessary to develop a performance-based education system. The commission shall include three members of the state board of education, three members appointed by the governor before July 1, 1992, and ~~((three))~~ five members appointed no later than

~~((February))~~ June 1, 1993, by the governor elected in the November 1992 election. The governor shall appoint a chair from the commission members, and fill any vacancies in gubernatorial appointments that may occur. The state board of education shall fill any vacancies of state board of education appointments that may occur. In making the appointments, educators, business leaders, and parents shall be represented, and nominations from state-wide education, business, and parent organizations shall be requested. Efforts shall be made to ensure that the commission reflects the ~~((cultural))~~ racial and ethnic diversity of the state's K-12 student population and that the major geographic regions in the state are represented. Appointees shall be qualified individuals who are supportive of educational restructuring, who have a positive record of service, and who will devote sufficient time to the responsibilities of the commission to ensure that the objectives of the commission are achieved.

~~((3))~~ The commission shall begin its substantive work subject to subsection (1) of this section.

~~((4))~~ (2) The commission shall establish ~~((technical))~~ advisory committees. Membership of the ~~((technical))~~ advisory committees shall include, but not necessarily be limited to, professionals from the office of the superintendent of public instruction and the state board of education, and other state and local educational practitioners and student assessment specialists.

~~((5))~~ (3) The commission, with the assistance of the ~~((technical))~~ advisory committees, shall:

(a) ~~((Identify what all elementary and secondary students need to know and be able to do. At a minimum, these))~~ Develop essential academic learning requirements ~~((shall include reading, writing, speaking, science, history, geography, mathematics, and critical thinking. In developing these essential academic learning requirements, the commission shall incorporate))~~ based on the student learning goals ~~((identified by the council on education reform and funding))~~ in RCW 28A.150.210. Essential academic learning requirements shall be developed, to the extent possible, for each of the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. Essential academic learning requirements for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be completed no later than March 1, 1995. Essential academic learning requirements that incorporate the remainder of RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be completed no later than March 1, 1996. To the maximum extent possible, the commission shall integrate goal four and the knowledge and skill areas in the other goals in the development of the essential academic learning requirements;

(b) ~~((By December 1, 1995,))~~ (i) The commission shall present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the elementary ~~((grades)),~~ middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in (a) of this subsection. The academic

assessment system shall include a variety of ((methodologies)) assessment methods, including performance-based measures that are criterion-referenced. Performance standards for determining if a student has successfully completed an assessment shall be initially determined by the commission in consultation with the advisory committees required in subsection (2) of this section.

(ii) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who ((do)) have not ((master)) mastered the essential academic learning requirements at the appropriate periods in the student's educational development. ((Mastery of each component of the essential academic learning requirements shall be required before students progress in subsequent components of the essential academic learning requirements. The state board of education and superintendent of public instruction shall implement the elementary academic assessment system beginning in the 1996-97 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements.))

(iii) Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be initially implemented by the state board of education and superintendent of public instruction no later than the 1996-97 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be initially implemented by the state board of education and superintendent of public instruction no later than the 1997-98 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. To the maximum extent possible, the commission shall integrate knowledge and skill areas in development of the assessments.

(iv) Before the 2000-2001 school year, participation by school districts in the assessment system shall be optional. School districts that desire to participate before the 2000-2001 school year shall notify the superintendent of public instruction in a manner determined by the superintendent. Beginning in the 2000-2001 school year, all school districts shall be required to participate in the assessment system.

(v) The state board of education and superintendent of public instruction may modify the essential academic learning requirements and academic assessment system, as needed, in subsequent school years.

(vi) The commission shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender;

(c) (~~By December 1, 1996, present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the secondary grades designed to determine if each student has mastered the essential academic learning requirements identified for secondary students in (a) of this subsection. The academic assessment system shall use a variety of methodologies, including performance-based measures, to determine if students have mastered the essential academic learning requirements, and~~) After a determination is made by the state board of education that the high school assessment system has been implemented and that it is sufficiently reliable and valid, successful completion of the high school assessment shall lead to a certificate of mastery. The certificate of mastery shall be obtained by most students at about the age of sixteen, and is evidence that the student has successfully mastered the essential academic learning requirements during his or her educational career. The certificate of mastery shall be required for graduation but shall not be the only requirement for graduation. (~~The assessment system shall be designed so that the results are used by educators to evaluate instructional practices, and to initiate appropriate educational support for students who do not master the essential academic learning requirements.~~) The commission shall (~~recommend~~) make recommendations to the state board of education (~~whether the certificate of mastery should take the place of the graduation requirements or be required for graduation in addition to graduation requirements. The state board of education and superintendent of public instruction shall implement the secondary academic assessment system beginning in the 1997-98 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. The state board of education and superintendent of public instruction may modify the assessment system, as needed, in subsequent school years~~) regarding the relationship between the certificate of mastery and high school graduation requirements. Upon achieving the certificate of mastery, schools shall provide students with the opportunity to continue to pursue career and educational objectives through educational pathways that emphasize integration of academic and vocational education. Educational pathways may include, but are not limited to, programs such as work-based learning, school-to-work transition, tech prep, vocational-technical education, running start, and preparation for technical college, community college, or university education;

(d) Consider methods to address the unique needs of special education students when developing the assessments in (b) and (c) of this subsection;

(e) (~~Develop strategies that will assist educators in helping students master the essential academic learning requirements;~~

(f) ~~Establish a center the primary role of which is to plan, implement, and evaluate a high quality professional development process. The quality schools center shall: Have an advisory council composed of educators, parents, and community and business leaders; use best practices research regarding instruction, management, curriculum development, and assessment; coordinate its~~

~~activities with the office of the superintendent of public instruction and the state board of education; employ and contract with individuals who have a commitment to quality reform; prepare a six-year plan to be updated every two years; and be able to accept resources and funding from private and public sources;~~

~~(g) Develop recommendations for the repeal or amendment of federal, state, and local laws, rules, budgetary language, regulations, and other factors that inhibit schools from adopting strategies designed to help students achieve the essential academic learning requirements;~~

~~(h)) Consider methods to address the unique needs of highly capable students when developing the assessments in (b) and (c) of this subsection;~~

~~(f) Develop recommendations on the time, support, and resources, including technical assistance, needed by schools and school districts to help students achieve the essential academic learning requirements. These recommendations shall include an estimate for the legislature, superintendent of public instruction, and governor on the expected cost of implementing the ((elementary and secondary)) academic assessment system((s during the 1995-97 biennium and beyond));~~

~~((h)) (g) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements for public school students that ((would assist schools in adopting strategies designed to help students achieve the essential learning requirements)) are consistent with the essential academic learning requirements and the certificate of mastery;~~

~~((h)) (h) By December 1, ((1996)) 1998, recommend to the legislature, governor, state board of education, and superintendent of public instruction;~~

~~(i) A state-wide accountability system to monitor and evaluate accurately and fairly the level of learning occurring in individual schools and school districts. ((The commission also shall recommend to the legislature steps that should be taken to assist school districts and schools in which learning is significantly below expected levels of performance as measured by the academic assessment systems established under this section)) The accountability system shall be designed to recognize the characteristics of the student population of schools and school districts such as gender, race, ethnicity, socioeconomic status, and other factors. The system shall include school-site, school district, and state-level accountability reports;~~

~~(ii) A school assistance program to help schools and school districts that are having difficulty helping students meet the essential academic learning requirements;~~

~~(iii) A system to intervene in schools and school districts in which significant numbers of students persistently fail to learn the essential academic learning requirements; and~~

~~(iv) An awards program to provide incentives to school staff to help their students learn the essential academic learning requirements, with each school being assessed individually against its own baseline. Incentives shall be based~~

on the rate of percentage change of students achieving the essential academic learning requirements. School staff shall determine how the awards will be spent.

It is the intent of the legislature to begin implementation of programs in this subsection (3)(h) on September 1, 2000;

~~((4))~~ (i) Report annually by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission; and

~~((4) Complete other tasks, as appropriate)~~ (i) Make recommendations to the legislature and take other actions necessary or desirable to help students meet the student learning goals.

~~((6))~~ (4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

~~((7))~~ (5) The commission shall seek advice broadly from the public and all interested educational organizations in the conduct of its work, including holding periodic regional public hearings.

~~((8))~~ (6) The commission shall select an entity to provide staff support and the office of ~~(financial management)~~ the superintendent of public instruction shall ~~(contract with that entity)~~ provide administrative oversight and be the fiscal agent for the commission. The commission may direct the office of ~~(financial management)~~ the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations.

~~((9))~~ (7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

### PART III

#### STUDENT LEARNING IMPROVEMENT GRANTS

NEW SECTION. Sec. 301. A new section is added to chapter 28A.300 RCW to read as follows:

(1) To the extent funds are appropriated, the office of the superintendent of public instruction shall provide student learning improvement grants for the 1994-95 through 1996-97 school years. The purpose of the grants is to provide funds for additional time and resources for staff development and planning intended to improve student learning for all students, including students with diverse needs, consistent with the student learning goals in RCW 28A.150.210.

(2) To be eligible for student learning improvement grants, school district boards of directors shall:

(a) Adopt a policy regarding the sharing of instructional decisions with school staff, parents, and community members;

(b) Submit school-based applications that have been developed by school building personnel, parents, and community members. Each application shall:

(i) Enumerate specific activities to be carried out as part of the grant;



(ii) Identify the technical resources desired and availability of those resources;

(iii) Include a proposed budget; and

(iv) Indicate that the application was approved by the school principal and representatives of teachers, parents, and the community.

(3) The school board shall conduct at least one public hearing on schools' plans for using the grants before the board approves the plans. Boards may hear and approve more than one school's plan at a hearing. The board shall only submit applications for grants to the superintendent of public instruction if the board has approved the plans.

(4) If the requirements of subsections (2) and (3) of this section are met, the superintendent of public instruction shall approve the grant application.

(5) To the extent funds are appropriated, and for allocation purposes only, the amount of grants for the 1994-95 school year shall be based on time equivalent to no fewer than three days and not more than five days depending upon the number of grant applications received and on the number of full-time equivalent certificated staff, classified instructional aides, and classified secretaries who work in the school at the time of application. For the 1995-96 and 1996-97 school years, the equivalent of five days annually shall be provided. The allocation per full-time equivalent staff shall be determined in the biennial operating appropriations act. School districts shall use all funds received under this section solely for grants to schools and shall not use any portion of the funds for indirect costs.

(6) The state schools for the deaf and blind may apply for grants under this section.

(7) The superintendent of public instruction shall adopt timelines and rules as necessary under chapter 34.05 RCW to administer the program. The superintendent may modify application requirements for schools that have schools for the twenty-first century projects under RCW 28A.630.100. A copy of the proposed rules shall be submitted to the joint select committee on education restructuring established in section 1001 of this act at least forty-five days prior to adoption of the rules.

(8) Funding under this section shall not become a part of the state's basic program of education obligation as set forth under Article IX of the state Constitution.

**NEW SECTION. Sec. 302.** A new section is added to chapter 28A.305 RCW to read as follows:

School districts may use the application process in section 301 of this act to apply for waivers under RCW 28A.305.140.

**PART IV  
EDUCATOR TRAINING AND ASSISTANCE PROGRAMS**

**Sec. 401.** RCW 28A.415.250 and 1991 c 116 s 19 are each amended to read as follows:

The superintendent of public instruction shall adopt rules to establish and operate a teacher assistance program. For the purposes of this section, the terms "mentor teachers," "beginning teachers," and "experienced teachers" may include any person possessing any one of the various certificates issued by the superintendent of public instruction under RCW 28A.410.010. The program shall provide for:

(1) Assistance by mentor teachers who will provide a source of continuing and sustained support to beginning teachers, or experienced teachers who are having difficulties, or both, both in and outside the classroom. A mentor teacher may not be involved in evaluations under RCW 28A.405.100 of a teacher who receives assistance from said mentor teacher under the teacher assistance program established under this section. The mentor teachers shall also periodically inform their principals respecting the contents of training sessions and other program activities;

(2) Stipends for mentor teachers and beginning and experienced teachers which shall not be deemed compensation for the purposes of salary lid compliance under RCW ((~~28A.58.095~~) 28A.400.200: PROVIDED, That stipends shall not be subject to the continuing contract provisions of this title;

(3) Workshops for the training of mentor and beginning teachers;

(4) The use of substitutes to give mentor teachers, beginning teachers, and experienced teachers opportunities to jointly observe and evaluate teaching situations and to give mentor teachers opportunities to observe and assist beginning and experienced teachers in the classroom;

(5) Mentor teachers who are superior teachers based on their evaluations, pursuant to RCW 28A.405.010 through 28A.405.240, and who hold valid continuing certificates;

(6) Mentor teachers shall be selected by the district and may serve as mentors up to and including full time. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process; and

(7) Periodic consultation by the superintendent of public instruction or the superintendent's designee with representatives of educational organizations and associations, including educational service districts and public and private institutions of higher education, for the purposes of improving communication and cooperation and program review.

NEW SECTION. **Sec. 402.** A new section is added to chapter 28A.415 RCW to read as follows:

(1) To the extent specific funds are appropriated for the pilot program in this section, the superintendent of public instruction shall establish a pilot program

to support the pairing of full-time mentor teachers with experienced teachers who are having difficulties and full-time mentor teachers with beginning teachers under RCW 28A.415.250.

(2) The superintendent of public instruction shall submit a report to the legislature by December 31, 1995, with findings about the pilot program. The report shall include an analysis of the effectiveness of the pilot program in the remediation of teachers having difficulties, recommendations regarding continuing the program, and recommendations on new procedures under chapter 28A.405 RCW regarding teachers who have not shown sufficient progress in the area or areas of teaching skills needing improvement.

(3) The superintendent of public instruction shall appoint an oversight committee, which shall include teachers and administrators from the pilot districts, that shall be involved in the evaluation of the pilot program under this section.

(4) The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to implement the pilot program established under subsection (1) of this section.

**Sec. 403.** RCW 28A.405.140 and 1990 c 33 s 387 are each amended to read as follows:

After an evaluation conducted pursuant to RCW 28A.405.100, the ~~((school district))~~ principal or the evaluator may require the teacher to take in-service training provided by the district in the area of teaching skills needing improvement, and may require the teacher to have a mentor for purposes of achieving such improvement.

**NEW SECTION. Sec. 404.** A new section is added to chapter 28A.405 RCW to read as follows:

(1) To the extent funds are appropriated, the Washington state principal internship support program is created beginning in the 1994-95 school year. The purpose of the program is to provide funds to school districts to hire substitutes for district employees who are in a principal preparation program to complete an internship with a mentor principal.

(2) Participants in the principal internship support program shall be selected as follows:

(a) The candidate shall be enrolled in a state board-approved school principal preparation program;

(b) The candidate shall apply in writing to his or her local school district;

(c) Each school district shall determine which applicants meet its criteria for participation in the principal internship support program and shall notify its educational service district of the school district's selected applicants. When submitting the names of applicants, the school district shall identify a mentor principal for each principal intern applicant, and shall agree to provide the internship applicant at least forty-five student days of release time for the internship; and

(d) Educational service districts, with the assistance of an advisory board, shall select internship participants.

(3)(a) The maximum amount of state funding for each internship shall be the estimated state-wide average cost of providing a substitute teacher for forty-five school days.

(b) Funds appropriated for the principal internship support program shall be allocated by the superintendent of public instruction to the educational service districts based on the percentage of full-time equivalent public school students enrolled in school districts in each educational service district. Participants should be selected to reflect the percentage of minorities of the student population in the educational service district region, and to the extent practicable, represent an equal number of women and men. If it is not possible to find qualified candidates reflecting the percentage of minorities of the student population of the educational service district, the educational service district shall select those qualified candidates who meet these criteria and leave the remaining positions unfilled, and any unspent funds shall revert to the state general fund.

(c) Once principal internship participants have been selected, the educational service districts shall allocate the funds to the appropriate school districts. The funds shall be used to pay for replacement substitute staff while the school district employee is completing the principal internship.

(d) Educational service districts may be reimbursed for costs associated with implementing the program. Reimbursement rates shall be determined by the superintendent of public instruction.

NEW SECTION. Sec. 405. A new section is added to chapter 28A.405 RCW to read as follows:

(1) To the extent funds are appropriated, the Washington state superintendent and program administrator internship support program is created beginning in the 1994-95 school year. The purpose of the program is to provide funds to school districts to hire substitutes for district employees who are in a superintendent or program administrator preparation program to complete an internship with a mentor administrator.

(2) Participants in the superintendent and program administrator internship support program shall be selected as follows:

(a) The candidate shall be enrolled in a state board-approved school district superintendent or program administrator preparation program;

(b) The candidate shall apply in writing to his or her local school district;

(c) Each school district shall determine which applicants meet its criteria for participation in the internship support program and shall notify its educational service district of the school district's selected applicants. When submitting the names of applicants, the school district shall identify a mentor administrator for each intern applicant and shall agree to provide the internship applicant at least forty-five student days of release time for the internship; and

(d) Educational service districts, with the assistance of an advisory board, shall select internship participants.

(3)(a) The maximum amount of state funding for each internship shall be the estimated state-wide average cost of providing a substitute teacher for forty-five school days as calculated by the superintendent of public instruction.

(b) Funds appropriated for the internship support program shall be allocated by the superintendent of public instruction to the educational service districts based on the percentage of full-time equivalent public school students enrolled in school districts in each educational service district. To the extent practicable, participants should be selected to reflect the racial and ethnic diversity of the student population in the educational service district region, and represent an equal number of women and men.

(c) Once internship participants have been selected, the educational service districts shall allocate the funds to the appropriate school districts. The funds shall be used to pay for replacement substitute staff while the school district employee is completing the internship.

(d) Educational service districts may be reimbursed for costs associated with implementing the program. Reimbursement rates shall be determined by the superintendent of public instruction.

**NEW SECTION. Sec. 406.** (1) The state board of education shall appoint an administrator internship advisory task force to develop and recommend to the board standards for the principal and superintendent and program administrator internship support programs created in sections 404 and 405 of this act. Interns shall be required to complete the state board standards in order to successfully complete the internship program. These standards shall be adopted by the state board of education before the allocation of funds by the superintendent of public instruction pursuant to sections 404(3)(c) and 405(3)(c) of this act. Colleges, universities, and school districts may establish additional standards.

(2) Task force membership shall include, but not be limited to, representatives of the office of the superintendent of public instruction, principals, superintendents, program administrators, teachers, school directors, parents, higher education administrative preparation programs, and educational service districts. The task force membership shall, to the extent possible, be racially and ethnically diverse.

**NEW SECTION. Sec. 407.** A new section is added to chapter 28A.300 RCW to read as follows:

The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to administer the principal and superintendent and program administrator internship support programs.

**NEW SECTION. Sec. 408.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The paraprofessional training program is created. The primary purpose of the program is to provide training for classroom assistants to assist them in helping students achieve the student learning goals under RCW 28A.150.210.

Another purpose of the program is to provide training to certificated personnel who work with classroom assistants.

(2) The superintendent of public instruction may allocate funds, to the extent funds are appropriated for this program, to educational service districts, school districts, and other organizations for providing the training in subsection (1) of this section.

**PART V**

**CENTER FOR THE IMPROVEMENT OF STUDENT LEARNING**

**Sec. 501.** RCW 28A.300.130 and 1986 c 180 s 1 are each amended to read as follows:

(1) ~~((Recent and))~~ Expanding activity in educational research, educational restructuring, and educational improvement initiatives has produced and continues to produce much valuable information. The legislature finds that such information should be shared with the citizens and educational community of the state as widely as possible. To facilitate access to information and materials on ~~((education))~~ educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall ~~((act as the state clearinghouse for educational information-~~

~~(2) In carrying out this function, the superintendent of public instruction's primary duty shall be to collect, screen, organize, and disseminate information pertaining to the state's educational system from preschool through grade twelve, including but not limited to in-state research and development efforts; descriptions of exemplary, model, and innovative programs; and related information that can be used in developing more effective programs.~~

~~(3) The superintendent of public instruction shall maintain a collection of such studies, articles, reports, research findings, monographs, bibliographies, directories, curriculum materials, speeches, conference proceedings, legal decisions that are concerned with some aspect of the state's education system, and other applicable materials. All materials and information shall be considered public documents under chapter 42.17 RCW and the superintendent of public instruction shall furnish copies of educational materials at nominal cost.~~

~~(4) The superintendent of public instruction shall coordinate the dissemination of information with the educational service districts and shall publish and distribute, on a monthly basis, a newsletter describing current activities and developments in education in the state))~~ establish the center for the improvement of student learning. The primary purpose of the center is to provide assistance and advice to parents, school board members, educators, and the public regarding strategies for assisting students in learning the essential academic learning requirements pursuant to RCW 28A.630.885. The center shall work in conjunction with the commission on student learning, educational service districts, and institutions of higher education.

(2) The center shall:

(a) Serve as a clearinghouse for the completed work and activities of the commission on student learning;

(b) Serve as a clearinghouse for information regarding successful educational restructuring and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the state to support educational restructuring initiatives in Washington schools and districts;

(c) Provide best practices research and advice that can be used to help schools develop and implement: School improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; and other programs that will assist educators in helping students learn the essential academic learning requirements;

(d) Develop and distribute, in conjunction with the commission on student learning, parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;

(e) Identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;

(f) Take other actions to increase public awareness of the importance of parental and community involvement in education;

(g) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available under RCW 28A.305.140 and the broadened school board powers under RCW 28A.320.015;

(h) Provide training and consultation services;

(i) Address methods for improving the success rates of certain ethnic and racial student groups; and

(j) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction, after consultation with the commission on student learning, shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. The superintendent shall contract out with community-based organizations to meet the provisions of

subsection (2)(d) and (e) of this section. In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

(5) The superintendent shall report annually to the commission on student learning on the activities of the center.

**NEW SECTION. Sec. 502.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The center for the improvement of student learning account is hereby established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received from gifts, grants, or endowments for the center for the improvement of student learning. Moneys in the account may be spent only for activities of the center. Disbursements from the account shall be on authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

(2) The superintendent of public instruction may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the center for the improvement of student learning and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

## PART VI SCHOOL-TO-WORK TRANSITIONS

**NEW SECTION. Sec. 601.** (1) The legislature finds that preparing students to make successful transitions from school to work helps promote educational, career, and personal success for all students.

(2) A successful school experience should prepare students to make informed career direction decisions at critical points in their educational progress. Schools that demonstrate the relevancy and practical application of course work will expose students to a broad range of interrelated career and educational opportunities and will expand students' posthigh school options.

(3) The school-to-work transitions program, under chapter . . . , Laws of 1993 (Engrossed Substitute House Bill No. 1820), is intended to help secondary schools develop model programs for school-to-work transitions. The purposes of the model programs are to provide incentives for selected schools to:

- (a) Integrate vocational and academic instruction into a single curriculum;
- (b) Provide each student with a choice of multiple, flexible educational pathways based on the student's career interest areas;
- (c) Emphasize increased vocational and academic guidance and counseling for students;
- (d) Foster partnerships with local employers and employees to incorporate work sites as part of work-based learning experiences;



(e) Encourage collaboration among middle or junior high schools and secondary schools in developing successful transition programs and to encourage articulation agreements between secondary schools and community and technical colleges.

(4) The legislature further finds that successful implementation of the school-to-work transitions program is an important part of achieving the purposes of chapter . . . , Laws of 1993 (this act).

**NEW SECTION.** **Sec. 602.** A new section is added to chapter 28A.630 RCW to read as follows:

The superintendent of public instruction, in selecting projects for grant awards under the school-to-work transitions program, shall give additional consideration to schools or school districts whose proposals are consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board.

**Sec. 603.** RCW 28A.630.878 and 1992 c 137 s 11 are each amended to read as follows:

The superintendent of public instruction, through the (~~state clearinghouse for education information~~) center for the improvement of student learning, shall collect and disseminate to all school districts and other interested parties information about the (~~academic and vocational integration development pilot~~) school-to-work transitions projects.

**NEW SECTION.** **Sec. 604.** Section 603 of this act shall expire June 30, 1999.

## PART VII TECHNOLOGY

**NEW SECTION.** **Sec. 701.** The legislature recognizes that up-to-date tools will help students learn. Workplace technology requirements will continue to change and students should be knowledgeable in the use of technologies.

Furthermore, the legislature finds that the Washington systemic initiative is a broad-based effort to promote widespread public literacy in mathematics, science, and technology. An important component of the systemic initiative is the universal electronic access to information by students. It is the intent of the legislature that components of sections 702 through 706 of this act will support the state-wide systemic reform effort in mathematics, science, and technology as envisioned by the Washington systemic initiative.

**NEW SECTION.** **Sec. 702.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and section 705 of this act.

(1) "Education technology" or "technology" means the effective use of electronic and optical tools, including telephones, and electronic and optical pathways in helping students learn.

(2) "Network" means integrated linking of education technology systems in schools for transmission of voice, data, video, or imaging, or a combination of these.

**NEW SECTION. Sec. 703.** (1) The superintendent of public instruction, to the extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan, which shall be completed by December 15, 1993, and updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of on-line information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The state board of education, the commission on student learning, the department of information services, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the higher education coordinating board, the work force training and education coordinating board, and the state library.

**NEW SECTION. Sec. 704.** In conjunction with the plan required in section 703 of this act, the superintendent of public instruction shall prepare recommendations to the legislature regarding the development of a grant program for school districts for the purchase and installation of computers, computer software, telephones, and other types of education technology. The recommendations shall address methods to ensure equitable access to technology by students throughout the state, and methods to ensure that school districts have prepared technology implementation plans before applying for grant funds. The recommendations, with proposed legislation, shall be submitted to the appropriate committees of the legislature by December 15, 1993.

**NEW SECTION. Sec. 705.** A new section is added to chapter 28A.310 RCW to read as follows:

Educational service districts shall establish, subject to available funding, regional educational technology support centers for the purpose of providing ongoing educator training, school district cost-benefit analysis, long-range planning, network planning, distance learning access support, and other technical

and programmatic support. Each educational service district shall establish a representative advisory council to advise the educational service district in the expenditure of funds provided to the technology support centers.

**NEW SECTION.** **Sec. 706.** The superintendent of public instruction, to the extent funds are appropriated, shall distribute funds to educational service districts on a grant basis for the regional educational technology support centers established in section 705 of this act.

**NEW SECTION.** **Sec. 707.** The superintendent of public instruction, to the extent funds are appropriated, shall distribute funds to the Washington school information processing cooperative and to school districts on a grant basis, from moneys appropriated for the purposes of this section, for equipment, networking, and software to expand the current K-12 education state-wide network.

**NEW SECTION.** **Sec. 708.** (1) The superintendent of public instruction may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of educational technology and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(2) The education technology account is hereby established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received from gifts, grants, or endowments for education technology. Moneys in the account may be spent only for education technology. Disbursements from the account shall be on authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

**NEW SECTION.** **Sec. 709.** The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW governing the operation and scope of this chapter.

**NEW SECTION.** **Sec. 710.** Sections 701 through 704 and 706 through 709 of this act shall constitute a new chapter in Title 28A RCW.

## PART VIII EDUCATOR PERFORMANCE ASSESSMENT

**Sec. 801.** RCW 28A.410.030 and 1991 c 116 s 21 are each amended to read as follows:

**(1) Effective May 1, 1996, the state board of education shall require ((a uniform state admission to practice examination for)) teacher certification candidates((-- Commencing August 31, 1993, teacher certification candidates completing a teacher preparation program shall be required)) applying for initial certification to pass an ((admission to practice examination)) individual assessment before being granted an initial certificate. The assessment shall include but not be limited to essay questions. The requirement shall be waived for out-of-state applicants with more than three years of teaching experience.**

The ~~((examination))~~ assessment shall test knowledge and competence in subjects including, but not limited to, instructional skills, classroom management, ~~((and))~~ student behavior and development ~~((The examination shall consist primarily of essay questions))~~, oral and written language skills, student performance-based assessment skills, and other knowledge, skills, and attributes needed to be successful in assisting all students, including students with diverse and unique needs, in achieving mastery of the essential academic learning requirements established pursuant to RCW 28A.630.885. In administering the assessment, the state board shall address the needs of certification candidates who have specific learning disabilities or physical conditions that may require special consideration in taking the assessment.

(2) The state board of education shall adopt such rules as may be necessary to implement this section, including, but not limited to, rules establishing the fees assessed persons who apply to take the assessment and the circumstances, if any, under which such fees may be refunded in whole or part. Fees shall be set at a level not higher than the costs for administering the tests. Fees shall not include costs of developing the test. Fee revenues received under this section shall be deposited in the teacher assessment revolving fund hereby established in the custody of the state treasurer. The fund is subject to the allotment procedures provided under chapter 43.88 RCW, but no appropriation is required for disbursement. The superintendent of public instruction shall be responsible for administering the assessment program consistent with state board of education rules. The superintendent of public instruction shall expend moneys from the teacher assessment revolving fund exclusively for the direct and indirect costs of establishing, equipping, maintaining, and operating the assessment program.

(3) The state board of education shall only require the assessment in subsection (1) of this section when the legislature appropriates funds to develop the assessment under this section.

## PART IX READINESS TO LEARN

NEW SECTION. Sec. 901. A new section is added to chapter 70.190 RCW to read as follows:

(1) The legislature finds that helping children to arrive at school ready to learn is an important part of improving student learning.

(2) To the extent funds are appropriated, the family policy council shall award grants to community-based consortiums that submit comprehensive plans that include strategies to improve readiness to learn.

**PART X**  
**DEREGULATION, ACCOUNTABILITY, FUNDING, AND**  
**LEGISLATIVE OVERSIGHT**

**NEW SECTION. Sec. 1001.** (1) There is hereby created a joint select committee on education restructuring composed of twelve members as follows:

(a) Six members of the senate, three from each of the major caucuses, to be appointed by the president of the senate; and

(b) Six members of the house of representatives, three from each of the major caucuses, to be appointed by the speaker of the house of representatives.

(2) Staff support shall be provided by senate committee services and house of representatives office of program research as mutually agreed by the cochairs of the joint select committee. The cochairs shall be designated by the speaker of the house of representatives and the president of the senate.

(3) The expenses of the committee members shall be paid by the legislature under chapter 44.04 RCW.

(4) The committee shall seek advice from educators, business and labor leaders, parents, and others during its deliberations.

**NEW SECTION. Sec. 1002.** The joint select committee on education restructuring shall monitor, review, and annually report to the full legislature upon the enactment and implementation of education restructuring in Washington both at the state and local level, including the following:

(1) The progress of the commission on student learning in the completion of its tasks as designated in RCW 28A.630.885 and in any subsequent legislation relating to education restructuring;

(2) The success of the center for improvement of student learning established under RCW 28A.300.130;

(3) The number of school districts seeking waivers from basic education act requirements under RCW 28A.305.140 or other legislation, and the success of alternative programs pursued by those school districts;

(4) The progress and success of the commission on student learning, the superintendent of public instruction, the state board of education, the higher education coordinating board, and the state board for community and technical colleges in carrying out RCW 28A.630.885(3)(g), and any subsequent legislation relating to education restructuring; and

(5) Such other areas as the committee may deem appropriate.

**NEW SECTION. Sec. 1003.** (1) In addition to the duties in section 1002 of this act, the joint select committee on education restructuring shall review all laws pertaining to K-12 public education and to educator preparation and certification, except those that protect the health, safety, and civil rights of students and staff, with the intent of identifying laws that inhibit the achievement of the new system of performance-based education. The select committee shall report to the legislature by November 15, 1994. The laws pertaining to home schooling and private schools shall not be reviewed in this study.

(2) The joint select committee on education restructuring shall review current school district data reporting requirements for the purposes of accountability and meeting state information needs. The joint select committee shall report to the legislature by January 1995 on:

(a) What data is necessary to compare how school districts are performing before the essential academic learning requirements and the assessment system are implemented with how school districts are performing after the essential academic learning requirements and the assessment system are implemented; and

(b) What data is necessary pertaining to school district reports under the accountability systems developed by the commission on student learning under RCW 28A.630.885(3)(h).

**NEW SECTION. Sec. 1004.** By September 1, 1994, and each September 1st thereafter, the commission on student learning, the superintendent of public instruction, the state board of education, the higher education coordinating board, and the state board for community and technical colleges shall each report to the joint select committee on education restructuring regarding their progress in completing tasks as designated in chapter . . . , Laws of 1993 (this act), and tasks in any subsequent legislation relating to education restructuring.

**NEW SECTION. Sec. 1005.** The joint select committee on education restructuring shall submit its final report to the legislature by December 31, 2001.

**NEW SECTION. Sec. 1006.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) Beginning with the 1994-95 school year, to provide the local community and electorate with access to information on the educational programs in the schools in the district, each school shall publish annually a school performance report and deliver the report to each parent with children enrolled in the school and make the report available to the community served by the school. The annual performance report shall be in a form that can be easily understood and be used by parents, guardians, and other members of the community who are not professional educators to make informed educational decisions. As data from the assessments in RCW 28A.630.885 becomes available, the annual performance report should enable parents, educators, and school board members to determine whether students in the district's schools are attaining mastery of the student learning goals under RCW 28A.150.210, and other important facts about the schools' performance in assisting students to learn. The annual report shall make comparisons to a school's performance in preceding years and shall project goals in performance categories.

(2) The annual performance report shall include, but not be limited to: A brief statement of the mission of the school and the school district; enrollment statistics including student demographics; expenditures per pupil for the school year; a summary of student scores on all mandated tests; a concise annual budget report; student attendance, graduation, and dropout rates; information regarding the use and condition of the school building or buildings; a brief description of

the restructuring plan for the school; and an invitation to all parents and citizens to participate in school activities.

(3) The superintendent of public instruction shall develop by June 30, 1994, a model report form, which shall also be adapted for computers, that schools may use to meet the requirements of subsections (1) and (2) of this section.

**NEW SECTION.** **Sec. 1007.** (1) A legislative fiscal study committee is hereby created. The committee shall be comprised of three members from each caucus of the senate, appointed by the president of the senate, and three members from each caucus of the house of representatives, appointed by the speaker of the house of representatives. In consultation with the office of the superintendent of public instruction, the committee shall study the common school funding system.

(2) By January 16, 1995, the committee shall report to the full legislature on its findings and any recommendations for a new funding model for the common school system.

(3) This section shall expire January 16, 1995.

**Sec. 1008.** RCW 28A.225.220 and 1990 1st ex.s. c 9 s 201 are each amended to read as follows:

(1) Any board of directors may make agreements with adults choosing to attend school: PROVIDED, That unless such arrangements are approved by the state superintendent of public instruction, a reasonable tuition charge, fixed by the state superintendent of public instruction, shall be paid by such students as best may be accommodated therein.

(2) A district is strongly encouraged to honor the request of a parent or guardian for his or her child to attend a school in another district.

(3) A district shall release a student to a nonresident district that agrees to accept the student if:

(a) A financial, educational, safety, or health condition affecting the student would likely be reasonably improved as a result of the transfer; or

(b) Attendance at the school in the nonresident district is more accessible to the parent's place of work or to the location of child care; or

(c) There is a special hardship or detrimental condition.

(4) A district may deny the request of a resident student to transfer to a nonresident district if the release of the student would adversely affect the district's existing desegregation plan.

(5) For the purpose of helping a district assess the quality of its education program, a resident school district may request an optional exit interview or questionnaire with the parents or guardians of a child transferring to another district. No parent or guardian may be forced to attend such an interview or complete the questionnaire.

(6) Beginning with the 1993-94 school year, school districts may ~~((establish annual))~~ not charge transfer fees or tuition for nonresident students enrolled under subsection (3) of this section and RCW 28A.225.225. ~~((Until rules are adopted under section 202, chapter 9, Laws of 1990 1st ex. sess. for the~~

~~calculation of the transfer fee, the transfer fee shall be calculated by the same formula as the fees authorized under section 10, chapter 130, Laws of 1969. These fees, if applied, shall be applied uniformly for all such nonresident students except as provided in this section. The superintendent of public instruction, from available funds, shall pay any transfer fees for low income students assessed by districts under this section. All transfer fees must be paid over to the county treasurer within thirty days of its collection for the credit of the district in which such students attend.)~~ Reimbursement of a high school district for cost of educating high school pupils of a nonhigh school district shall not be deemed a transfer fee as affecting the apportionment of current state school funds.

NEW SECTION. **Sec. 1009.** Sections 1001 through 1005 of this act are each added to chapter 28A.630 RCW.

NEW SECTION. **Sec. 1010.** Sections 1001 through 1005 of this act shall expire December 1, 2001.

## PART XI

### PRIVATE SCHOOL AND HOME SCHOOL STUDENT EXEMPTIONS

**Sec. 1101.** RCW 28A.195.010 and 1990 c 33 s 176 are each amended to read as follows:

The legislature hereby recognizes that private schools should be subject only to those minimum state controls necessary to insure the health and safety of all the students in the state and to insure a sufficient basic education to meet usual graduation requirements. The state, any agency or official thereof, shall not restrict or dictate any specific educational or other programs for private schools except as hereinafter in this section provided.

Principals of private schools or superintendents of private school districts shall file each year with the state superintendent of public instruction a statement certifying that the minimum requirements hereinafter set forth are being met, noting any deviations. After review of the statement, the state superintendent will notify schools or school districts of those deviations which must be corrected. In case of major deviations, the school or school district may request and the state board of education may grant provisional status for one year in order that the school or school district may take action to meet the requirements. Minimum requirements shall be as follows:

(1) The minimum school year for instructional purposes shall consist of no less than one hundred eighty school days or the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220.

(2) The school day shall be the same as that required in RCW 28A.150.030 and 28A.150.220, except that the percentages of total program hour offerings as prescribed in RCW 28A.150.220 for basic skills, work skills, and optional subjects and activities shall not apply to private schools or private sectarian schools.



(3) All classroom teachers shall hold appropriate Washington state certification except as follows:

(a) Teachers for religious courses or courses for which no counterpart exists in public schools shall not be required to obtain a state certificate to teach those courses.

(b) In exceptional cases, people of unusual competence but without certification may teach students so long as a certified person exercises general supervision. Annual written statements shall be submitted to the office of the superintendent of public instruction reporting and explaining such circumstances.

(4) An approved private school may operate an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody. The extension program shall require at a minimum that:

(a) The parent, guardian, or custodian be under the supervision of an employee of the approved private school who is certified under chapter 28A.410 RCW;

(b) The planning by the certified person and the parent, guardian, or person having legal custody include objectives consistent with this subsection and subsections (1), (2), (5), (6), and (7) of this section;

(c) The certified person spend a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the approved private school extension program;

(d) Each student's progress be evaluated by the certified person; and

(e) The certified employee shall not supervise more than thirty students enrolled in the approved private school's extension program.

(5) Appropriate measures shall be taken to safeguard all permanent records against loss or damage.

(6) The physical facilities of the school or district shall be adequate to meet the program offered by the school or district: **PROVIDED**, That each school building shall meet reasonable health and fire safety requirements. However, the state board shall not require private school students to meet the student learning goals, obtain a certificate of mastery to graduate from high school, to master the essential academic learning requirements, or to be assessed pursuant to RCW 28A.630.885. However, private schools may choose, on a voluntary basis, to have their students master these essential academic learning requirements, take these assessments, and obtain certificates of mastery. A residential dwelling of the parent, guardian, or custodian shall be deemed to be an adequate physical facility when a parent, guardian, or person having legal custody is instructing his or her child under subsection (4) of this section.

(7) Private school curriculum shall include instruction of the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music, all in sufficient units for meeting state board of education graduation requirements.

(8) Each school or school district shall be required to maintain up-to-date policy statements related to the administration and operation of the school or school district.

All decisions of policy, philosophy, selection of books, teaching material, curriculum, except as in subsection (7) above provided, school rules and administration, or other matters not specifically referred to in this section, shall be the responsibility of the administration and administrators of the particular private school involved.

**NEW SECTION. Sec. 1102.** 1992 c 141 s 505 is repealed.

**Sec. 1103.** RCW 28A.200.010 and 1990 c 33 s 178 are each amended to read as follows:

Each parent whose child is receiving home-based instruction under RCW 28A.225.010(4) shall have the duty to:

(1) File annually a signed declaration of intent that he or she is planning to cause his or her child to receive home-based instruction. The statement shall include the name and age of the child, shall specify whether a certificated person will be supervising the instruction, and shall be written in a format prescribed by the superintendent of public instruction. Each parent shall file the statement by September 15 of the school year or within two weeks of the beginning of any public school quarter, trimester, or semester with the superintendent of the public school district within which the parent resides;

(2) Ensure that test scores or annual academic progress assessments and immunization records, together with any other records that are kept relating to the instructional and educational activities provided, are forwarded to any other public or private school to which the child transfers. At the time of a transfer to a public school, the superintendent of the local school district in which the child enrolls may require a standardized achievement test to be administered and shall have the authority to determine the appropriate grade and course level placement of the child after consultation with parents and review of the child's records; and

(3) Ensure that a standardized achievement test approved by the state board of education is administered annually to the child by a qualified individual or that an annual assessment of the student's academic progress is written by a certificated person who is currently working in the field of education. The state board of education shall not require these children to meet the student learning goals, master the essential academic learning requirements, to take the assessments, or to obtain a certificate of mastery pursuant to RCW 28A.630.885. The standardized test administered or the annual academic progress assessment written shall be made a part of the child's permanent records. If, as a result of the annual test or assessment, it is determined that the child is not making reasonable progress consistent with his or her age or stage of development, the parent shall make a good faith effort to remedy any deficiency.

Failure of a parent to comply with the duties in this section shall be deemed a failure of such parent's child to attend school without valid justification under RCW 28A.225.020. Parents who do comply with the duties set forth in this section shall be presumed to be providing home-based instruction as set forth in RCW 28A.225.010(4).

## PART XII MISCELLANEOUS

**NEW SECTION. Sec. 1201.** RCW 28A.630.884 and 1992 c 141 s 201 are each repealed.

**Sec. 1202.** 1992 c 141 s 509 (uncodified) is amended to read as follows:  
Sections (~~(504)~~) 502 through 504, 506, and 507 of this act shall take effect September 1, (~~(1998)~~) 2000. However, these sections shall not take effect if, by September 1, (~~(1998)~~) 2000, a law is enacted stating that a school accountability and academic assessment system is not in place.

**NEW SECTION. Sec. 1203.** 1992 c 141 s 501 is repealed.

**NEW SECTION. Sec. 1204.** Part headings as used in this act constitute no part of the law.

Passed the House April 25, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 12, 1993.

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## CHAPTER 337

[Engrossed Substitute House Bill 1562]

### LOW-INCOME HOUSING—LOCAL GOVERNMENT FUNDING BY EXCESS LEVIES

**Effective Date:** 7/25/93

AN ACT Relating to the authority of counties, cities, and towns to exceed statutory property tax limitations for the purpose of financing affordable housing for very low-income households; amending RCW 84.52.043, 84.52.010, and 84.52.069; adding a new section to chapter 84.52 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that:

- (1) Many very low-income residents of the state of Washington are unable to afford housing that is decent, safe, and appropriate to their living needs;
- (2) Recent federal housing legislation conditions funding for affordable housing on the availability of local matching funds;
- (3) Current statutory debt limitations may impair the ability of counties, cities, and towns to meet federal matching requirements and, as a consequence, may impair the ability of such counties, cities, and towns to develop appropriate and effective strategies to increase the availability of safe, decent, and appropriate housing that is affordable to very low-income households; and

(4) It is in the public interest to encourage counties, cities, and towns to develop locally based affordable housing financing plans designed to expand the availability of housing that is decent, safe, affordable, and appropriate to the living needs of very low-income households of the counties, cities, and towns.

**NEW SECTION.** Sec. 2. A new section is added to chapter 84.52 RCW to read as follows:

(1) A county, city, or town may impose additional regular property tax levies of up to fifty cents per thousand dollars of assessed value of property in each year for up to ten consecutive years to finance affordable housing for very low-income households when specifically authorized to do so by a majority of the voters of the taxing district voting on a ballot proposition authorizing the levies. If both a county, and a city or town within the county, impose levies authorized under this section, the levies of the last jurisdiction to receive voter approval for the levies shall be reduced or eliminated so that the combined rates of these levies may not exceed fifty cents per thousand dollars of assessed valuation in any area within the county. A ballot proposition authorizing a levy under this section must conform with RCW 84.52.054.

(2) The additional property tax levies may not be imposed until:

(a) The governing body of the county, city, or town declares the existence of an emergency with respect to the availability of housing that is affordable to very low-income households in the taxing district; and

(b) The governing body of the county, city, or town adopts an affordable housing financing plan to serve as the plan for expenditure of funds raised by a levy authorized under this section, and the governing body determines that the affordable housing financing plan is consistent with either the locally adopted or state-adopted comprehensive housing affordability strategy, required under the Cranston-Gonzalez national affordable housing act (42 U.S.C. Sec. 12701, et seq.), as amended.

(3) For purposes of this section, the term "very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income, as determined by the United States department of housing and urban development, with adjustments for household size, for the county where the taxing district is located.

**Sec. 3.** RCW 84.52.043 and 1990 c 234 s 1 are each amended to read as follows:

Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not

exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) ~~(Except as provided in RCW 84.52.100,)~~ The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; ~~(and)~~ (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; and (e) levies to finance affordable housing for very low-income housing imposed under section 2 of this act.

**Sec. 4.** RCW 84.52.010 and 1990 c 234 s 4 are each amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, as now or hereafter amended, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not

exceeding the limitations established by law, subject to subsection (2)(e) of this section; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010; however, if as a result of the levies imposed under RCW 84.52.069, 84.34.230, and section 2 of this act, the combined rates of regular property tax levies exceed one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230 and section 2 of this act, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis or eliminated until the combined rates of regular property tax levies no longer exceed one percent of the true and fair value of any property; and

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

**Sec. 5.** RCW 84.52.069 and 1991 c 175 s 1 are each amended to read as follows:

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of

property in the taxing district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty per centum of the total votes cast in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty per centum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

(3) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(4) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed fifty cnts. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is authorized subsequent to a county emergency medical service levy, shall expire concurrently with the county emergency medical service levy.

(5) The tax levy authorized in this section is in addition to the tax levy authorized in RCW 84.52.043.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

~~((7) No taxing district may levy under this section more than twenty-five cents per thousand dollars of assessed value of property if reductions under RCW 84.52.010(2) are made for the year within the boundaries of the taxing district.))~~

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 13, 1993.

Filed in Office of Secretary of State May 13, 1993.

## CHAPTER 338

[Engrossed Substitute House Bill 1922]

### WORK ETHIC BOOT CAMP PILOT PROGRAM

Effective Date: 7/1/93

AN ACT Relating to creation of a work ethic boot camp; reenacting and amending RCW 9.94A.030; adding new sections to chapter 72.09 RCW; adding a new section to chapter 9.94A RCW; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that high crime rates and a heightened sense of vulnerability have led to increased public pressure on criminal justice officials to increase offender punishment and remove the most dangerous criminals from the streets. As a result, there is unprecedented growth in the corrections populations and overcrowding of prisons and local jails. Skyrocketing costs and high rates of recidivism have become issues of major public concern. Attention must be directed towards implementing a long-range corrections strategy that focuses on inmate responsibility through intensive work ethic training.

The legislature finds that many offenders lack basic life skills and have been largely unaffected by traditional correctional philosophies and programs. In addition, many first-time offenders who enter the prison system learn more about how to be criminals than the important qualities, values, and skills needed to successfully adapt to a life without crime.

The legislature finds that opportunities for offenders to improve themselves are extremely limited and there has not been adequate emphasis on alternatives to total confinement for nonviolent offenders.

The legislature finds that the explosion of drug crimes since the inception of the sentencing reform act and the response of the criminal justice system have resulted in a much higher proportion of substance abuse-affected offenders in the state's prisons and jails. The needs of this population differ from those of other offenders and present a great challenge to the system. The problems are



exacerbated by the shortage of drug treatment and counseling programs both in and outside of prisons.

The legislature finds that the concept of a work ethic camp that requires the offender to complete an appropriate and balanced combination of highly structured and goal-oriented work programs such as correctional industries based work camps and/or class I and class II work projects, drug rehabilitation, and intensive life management work ethic training, can successfully reduce offender recidivism and lower the overall cost of incarceration.

It is the purpose and intent of sections 1 and 3 through 6 of this act to implement a regimented work ethic camp that is designed to directly address the high rate of recidivism, reduce upwardly spiraling prison costs, preserve scarce and high cost prison space for the most dangerous offenders, and provide judges with a tough and sound alternative to traditional incarceration without compromising public safety.

**Sec. 2.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and reinit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence

conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit ~~((of))~~ of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, and except as provided in (b) of this subsection, who

previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(33) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((33))~~ (34) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((34))~~ (35) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private

property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

~~((35))~~ (36) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(37) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

~~((36))~~ (38) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon:

(i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

**NEW SECTION.** Sec. 3. The department of corrections shall establish one work ethic camp. The secretary shall locate the work ethic camp within an already existing department compound or facility, or in a facility that is scheduled to come on line within the initial implementation date outlined in this section. The facility selected for the camp shall appropriately accommodate the logistical and cost-effective objectives contained in sections 1 and 3 through 6 of this act. The department shall be ready to assign inmates to the camp one hundred twenty days after the effective date of this act. The department shall establish the work ethic camp program cycle to last from one hundred twenty to one hundred eighty days. The department shall develop all aspects of the work ethic camp program including, but not limited to, program standards, conduct standards, educational components including general education development test achievement, offender incentives, drug rehabilitation program parameters, individual and team work goals, techniques for improving the offender's self-esteem, citizenship skills for successful living in the community, measures to hold the offender accountable for his or her behavior, and the successful completion of the work ethic camp program granted to the offender based on successful attendance, participation, and performance as defined by the secretary. The work ethic camp shall be designed and implemented so that offenders are continually engaged in meaningful activities and unstructured time is kept to a minimum. In addition, the department is encouraged to explore the integration and overlay of a military style approach to the work ethic camp.

**NEW SECTION.** Sec. 4. A new section is added to chapter 9.94A RCW to read as follows:

(1) An offender is eligible to be sentenced to a work ethic camp if the offender:

(a) Is sentenced to a term of total confinement of not less than twenty-two months or more than thirty-six months;

(b) Is between the ages of eighteen and twenty-eight years; and

(c) Has no current or prior convictions for any sex offenses or violent offenses.

(2) If the sentencing judge determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard range and may recommend that the offender serve the sentence at a work ethic camp. The sentence shall provide that if the offender successfully completes the program, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp confinement to three days of total standard confinement. The court shall also provide that upon completion of the work ethic camp program, the offender shall be released on community custody for any remaining time of total confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless the department determines that the offender has physical or mental impairments that would prevent participation and completion of the program, or the offender refuses to agree to the terms and conditions of the program.

(4) An inmate who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time.

(5) The length of the work ethic camp program shall be at least one hundred twenty days and not more than one hundred eighty days. Because of the conversion ratio, earned early release time shall not accrue to offenders who successfully complete the program.

(6) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

***\*NEW SECTION. Sec. 5. The work ethic camp program shall employ one hundred percent of all inmates. The employment options available for inmates shall include meaningful work opportunities that provide the offender with real-world skills that help the offender find employment when he or she successfully completes the work ethic camp program. The department shall include in the work ethic camp program, without limitation, class I, class II, and class IV correctional programs. No more than thirty-five percent of the total inmate population in the facility shall be employed in class III correctional industries programs in the first year and thereafter ten percent less per year until a maximum of ten percent of the inmates are working in this employment class. In addition, work options shall also include department-supervised work crews as defined by the department. These work crews shall have the ability to work on public roads conducting litter control, minor emergency repair or other minor tasks that do not negatively impact employment opportunities for people with developmental disabilities contracted through the operation of***



*sheltered workshops as defined in RCW 82.04.385, or have a negative impact on the local labor market or local business community as assessed by the department correctional industries advisory board of directors. The department shall establish, to the extent possible, programs that will positively impact our natural environment such as, but not limited to, recycling programs and minor environmental cleanup programs. If the department is directed by the legislature to increase the percentage of inmates employed in correctional industries programs, inmates employed through work ethic camps shall not be counted towards this total percentage.*

\*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 6. The work ethic camp program established in sections 1 and 3 through 6 of this act shall be considered a pilot alternative incarceration program and remain in effect until July 1, 1998. The department and the office of financial management shall monitor and analyze the effectiveness of the work ethic camp program and complete a final outcome evaluation study by January 15, 1998. The study shall include: The recidivism rates of successful program graduates, analysis of the overall program costs, the ability to maintain public safety, and any other pertinent data established by the department. The department may encourage interested universities to participate in studies that will enhance the effectiveness of the program.

The department of corrections shall seek the availability of federal funds for the planning, implementation, evaluation, and training of staff for work ethic camp programs, substance abuse programs, and offender education programs.

NEW SECTION. Sec. 7. Sections 1, 3, 5, and 6 of this act are each added to chapter 72.09 RCW.

NEW SECTION. Sec. 8. 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. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 13, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 1922 entitled:

"AN ACT Relating to creation of a work ethic boot camp."

Engrossed Substitute House Bill No. 1922 directs the Department of Corrections to create a work ethic camp within an existing or soon to be completed Department of

Corrections facility. This program of education and training for offenders should reduce recidivism and increase public safety.

Section 5 of Engrossed Substitute House Bill No. 1922 directs the Department to employ 100 percent of all program inmates in Class I, II and IV correctional industries jobs programs, with limited employment allowed for Class III industries. The Department does not currently have Class I and II programs available at potential camp sites and therefore cannot comply with the requirements of this section within the timeline set out in the bill.

Additionally, section 5 imposes limitations on the employment level allowed for Class III industries such as food service, sanitation, maintenance and clerical support. While I agree with the goal of meaningful work experience, the limitations on Class III industries may prove too restrictive, forcing the Department to pay staff overtime or hire outside contractors to perform functions traditionally assigned to inmates.

While I have vetoed section 5 for the reasons stated above, the intent of Engrossed Substitute House Bill No. 1922 will be carried out. The Department of Corrections is committed to the establishment of a successful and productive camp under this bill and to work with the legislature on the further development of the work ethic camp program.

With the exception of section 5, Engrossed Substitute House Bill No. 1922 is approved."

## CHAPTER 339

[Substitute Senate Bill 5066]

### TRUSTEES—LIMITATIONS ON POWERS

**Effective Date:** 7/25/93

AN ACT Relating to limiting the powers of a trustee; amending RCW 11.97.010; adding new sections to chapter 11.98 RCW; and adding new sections to chapter 11.95 RCW.

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

**Sec. 1.** RCW 11.97.010 and 1985 c 30 s 38 are each amended to read as follows:

The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104 RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in sections 2 through 12 of this act. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment.

**NEW SECTION.** **Sec. 2.** Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to sections 2 through 6 of this act and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust,

other than the trustor as a trustee, and other than the decedent's spouse or the testator's spouse where the spouse is the trustee of a trust for which a marital deduction is or was otherwise allowed or allowable, whether or not an appropriate marital deduction election was in fact made, cannot be exercised by the trustee to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee, except to provide for the trustee's health, education, maintenance, or support as described under section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section;

(2) Discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties; or

(3) Discretionary distributions of either principal or income to satisfy a legal support obligation of the trustee.

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this section, a person described in RCW 11.96.070 who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW 11.98.039 as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW 11.96.170.

**NEW SECTION.** Sec. 3. If a trustee is a beneficiary of the trust and the trust instrument confers the power to make distributions of principal or income for the trustee's health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a trust provision purporting to confer "absolute," "sole," "complete," "conclusive," or a similar discretion relating to the exercise of such trustee powers shall be disregarded in the exercise of the power, and the power may then only be exercised reasonably and in accordance with the ascertainable standard as set forth in section 2 of this act and this section. A person who has the right to remove or to replace a trustee does not possess nor may the person be deemed to possess by virtue of having that right the powers of the trustee who is subject to removal or replacement.

**NEW SECTION.** Sec. 4. Sections 2 through 6 of this act do not raise any inference that the law of this state prior to the effective date of this act was different than under sections 2 through 6 of this act. Further, sections 2 through 6 of this act do not raise an inference that prior to the effective date of this act a trustee's exercise or failure to exercise a power described in sections 2 through

6 of this act was not subject to review by a court of competent jurisdiction for abuse of discretion or breach of fiduciary duty under chapter 11.96 RCW or other applicable law. Following the effective date of this act the power of judicial review continues to apply.

**NEW SECTION. Sec. 5.** Notwithstanding any provision of sections 2 through 6 of this act seemingly to the contrary, sections 2 through 6 of this act do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, sections 2 through 6 of this act do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections.

**NEW SECTION. Sec. 6.** (1)(a)(i) Sections 2 and 3 of this act respectively apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after the effective date of this act, unless the instrument's terms refer specifically to section 2 or 3 of this act respectively and provide expressly to the contrary.

(ii) Notwithstanding (a)(i) of this subsection, for the purposes of this subsection a codicil to a will or an amendment to a trust does not cause that instrument to be executed after the aforementioned date unless the codicil or amendment clearly shows an intent to have section 2 or 3 of this act apply.

(b) Notwithstanding (a) of this subsection, sections 2 and 3 of this act respectively apply to a trust established under a will or codicil of a decedent dying on or after the effective date of this act, and to an inter vivos trust to which the trustor had on or after the effective date of this act the power to terminate, revoke, amend, or modify, unless:

(i) The terms of the instrument specifically refer to section 2 or 3 of this act respectively and provide expressly to the contrary; or

(ii) The decedent or the trustor was not competent, on the effective date of this act, to change the disposition of his or her property, or to terminate, revoke, amend, or modify the trust, and did not regain his or her competence to dispose, terminate, revoke, amend, or modify before the date of the decedent's death or before the trust could not otherwise be revoked, terminated, amended, or modified by the decedent or trustor.

(2) Section 2 of this act neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed under section 2 of this act that was exercised before the effective date of this act. Section 3 of this act neither creates a new cause of action nor impairs an existing

cause of action that, in either case, relates to a power proscribed, limited, or qualified under section 3 of this act.

**NEW SECTION.** **Sec. 7.** If the standard governing the exercise of a lifetime or a testamentary power of appointment does not clearly indicate that a broader or more restrictive power of appointment is intended, the holder of the power of appointment may exercise it in his or her favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under the section.

**NEW SECTION.** **Sec. 8.** If the holder of a lifetime or testamentary power of appointment may exercise the power in his or her own favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a provision of the instrument creating the power of appointment that purports to confer "absolute," "sole," "complete," "conclusive," or a similar discretion shall be disregarded in the exercise of that power in favor of the holder, and that power may then only be exercised reasonably and in accordance with the ascertainable standards set forth in section 7 of this act and this section. A person who has the right to remove or replace a trustee does not possess nor may the person be deemed to possess, by virtue of having that right, the power of the trustee who is subject to removal or to replacement.

**NEW SECTION.** **Sec. 9.** Notwithstanding any provision of sections 7 through 12 of this act seemingly to the contrary, sections 7 through 12 of this act do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, sections 7 through 12 of this act do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections.

**NEW SECTION.** **Sec. 10.** Sections 7 through 12 of this act do not raise an inference that the law of this state prior to the effective date of this act was different than contained in sections 7 through 12 of this act.

**NEW SECTION.** **Sec. 11.** (1)(a) Sections 7 and 8 of this act respectively apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed after the effective date of this act, unless the terms of the instrument refer

specifically to section 7 or 8 of this act respectively and provide expressly to the contrary.

(b) Notwithstanding (a) of this subsection, for the purposes of this section a codicil to a will, an amendment to a trust, or an amendment to another instrument that created the power of appointment in question shall not be deemed to cause that instrument to be executed after the effective date of this act unless the codicil, amendment, or other instrument clearly shows an intent to have section 7 or 8 of this act apply.

(2) Notwithstanding subsection (1) of this section, sections 7 through 12 of this act shall apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed prior to the effective date of this act, if the person who created the power of appointment had on the effective date of this act the power to revoke, amend, or modify the instrument creating the power of appointment, unless:

(a) The terms of the instrument specifically refer to section 7 or 8 of this act respectively and provide expressly to the contrary; or

(b) The person creating the power of appointment was not competent, on the effective date of this act, to revoke, amend, or modify the instrument creating the power of appointment and did not regain his or her competence to revoke, amend, or modify the instrument creating the power of appointment on or before his or her death or before the time at which the instrument could no longer be revoked, amended, or modified by the person.

**NEW SECTION.** Sec. 12. Sections 7 through 11 of this act neither create a new cause of action nor impair an existing cause of action that, in either case, relates to a power that was exercised before the effective date of this act. Sections 7 through 11 of this act neither create a new cause of action nor impair an existing cause of action that in either case relates to a power proscribed, limited, or qualified under sections 7 through 11 of this act.

**NEW SECTION.** Sec. 13. (1) Sections 2 through 6 of this act are each added to chapter 11.98 RCW.

(2) Sections 7 through 12 of this act are each added to chapter 11.95 RCW.

**NEW SECTION.** Sec. 14. 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 Senate March 9, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 340

[Senate Bill 5124]

## COMMERCIAL FISHING LICENSES

Effective Date: 1/1/94

AN ACT Relating to commercial fishing licenses; amending RCW 75.28.010, 75.28.014, 75.28.020, 75.28.030, 75.28.040, 75.28.110, 75.28.113, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.280, 75.28.290, 75.28.690, 75.28.287, 75.28.710, 75.30.050, 75.30.065, 75.30.070, 75.30.090, 75.30.100, 75.30.120, 75.30.125, 75.30.130, 75.30.140, 75.28.235, 75.28.245, 75.30.160, 75.30.170, 75.30.180, 75.30.210, 75.30.220, 75.30.240, 75.30.250, 75.08.230, 75.28.134, 75.24.100, 75.28.070, and 75.50.100; reenacting and amending RCW 75.28.095 and 75.08.011; adding new sections to chapter 75.28 RCW; adding new sections to chapter 75.30 RCW; adding new sections to chapter 75.12 RCW; creating new sections; recodifying RCW 75.28.070, 75.28.134, 75.28.235, 75.28.245, and 75.28.287; decodifying RCW 75.30.150; repealing RCW 75.28.012, 75.28.035, 75.28.060, 75.28.140, and 75.28.255; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989.

**Sec. 2.** RCW 75.28.010 and 1991 c 362 s 1 are each amended to read as follows:

(1) Except as otherwise provided by this title, it is unlawful to engage in any of the following activities without a license or permit issued by the director ((is required to)):

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver food fish or shellfish taken in offshore waters;
- (c) Operate a charter boat or commercial fishing vessel engaged in a fishery;
- (d) Engage in processing or wholesaling food fish or shellfish; or
- (e) ~~((Operate))~~ Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) ~~((It is unlawful to))~~ No person may engage in the activities described in subsection (1) of this section ((without having in possession)) unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon

recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

**Sec. 3.** RCW 75.28.014 and 1986 c 198 s 8 are each amended to read as follows:

~~((1)) The ((department may establish by rule license)) application deadline((s)) for ((types of gear and licensing districts. An applicant for)) a commercial ((salmon fishing)) license ((shall submit a license application in accordance with this subsection.~~

~~(a) If an application is postmarked or personally delivered to the department in Olympia by the application deadline, it shall be accompanied by the prescribed license fee.~~

~~(b) If an application is postmarked or personally delivered to the department in Olympia after the application deadline, it shall be accompanied by the prescribed license fee and a late application fee of two hundred dollars.~~

~~(2) Columbia River smelt license applications accompanied by the license fee shall be made in person or postmarked by January 10 of the license year)) or permit established in this chapter is December 31 of the calendar year for which the license or permit is sought. The department shall accept no license or permit applications after December 31 of the calendar year for which the license or permit is sought.~~

**Sec. 4.** RCW 75.28.020 and 1989 c 47 s 1 are each amended to read as follows:

(1) ~~((The department may only issue))~~ Except as otherwise provided in this title, a person as defined in RCW 75.08.011 may hold a commercial license ((to a person who)) established by this chapter.

(2) Except as otherwise provided in this title, an individual may hold a commercial license only if the individual is sixteen years of age or older and a bona fide resident of the United States. ~~((The deckhand license required by RCW 75.28.690 may be issued to persons under sixteen years of age. The department may only issue a commercial license to))~~

(3) A corporation may hold a commercial license only if it is authorized to do business in this state. ~~((A valid Oregon license which is comparable to a license under this title is valid in the concurrent waters of the Columbia River if the state of Oregon recognizes as valid the comparable Washington license.))~~

(4) No person may hold a limited-entry license unless the person meets the qualifications that this title establishes for the license.



**Sec. 5.** RCW 75.28.030 and 1983 1st ex.s. c 46 s 105 are each amended to read as follows:

(1) Except as otherwise provided in this title, the director shall issue commercial licenses and permits to a qualified person(+) upon ((the receipt of a)) receiving a completed application accompanied by the required fee. ((Applications shall be submitted on forms provided by the department. Applicants for commercial licenses and permits shall indicate at the time of application the species of food fish or shellfish they intend to take and the type of gear they intend to use.))

(2) An application submitted to the department under this chapter shall contain the name and address of the applicant and any other information required by the department or this title. An applicant for a commercial fishery license, delivery license, or charter license may designate a vessel to be used with the license and up to two alternate operators.

(3) An application submitted to the department under this chapter shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(4) Upon issuing a commercial license under this chapter, the director shall assign the license a unique number that the license shall retain upon renewal. The department shall use the number to record any commercial catch under the license. This does not preclude the department from using other, additional, catch record methods.

(5) The fee to replace a license that has been lost or destroyed is eleven dollars.

**Sec. 6.** RCW 75.28.040 and 1983 1st ex.s. c 46 s 108 are each amended to read as follows:

(1) A commercial license issued under this chapter permits the license holder to engage in the activity for which the license is issued in accordance with this title and the rules of the director.

(2) No security interest or lien of any kind, including tax liens, may be created or enforced in a license issued under this chapter.

(3) Unless otherwise provided in this title or rules of the director, commercial licenses and permits issued under this chapter expire at midnight on December 31st ((following their issuance and)) of the calendar year for which they are issued. In accordance with this title, licenses may be renewed annually upon application and payment of the prescribed license fees.

**NEW SECTION. Sec. 7.** A new section is added to chapter 75.28 RCW to read as follows:

**VESSEL DESIGNATION.** This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a

vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) It is unlawful to take food fish or shellfish in a fishery that requires a vessel except from a vessel designated on a commercial fishery license for that fishery.

(4) It is unlawful to operate a vessel as a charter boat unless the vessel is designated on a charter license.

(5) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries. No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license.

**NEW SECTION.** Sec. 8. A new section is added to chapter 75.28 RCW to read as follows:

**CHANGES IN VESSEL DESIGNATION.** This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for emergency salmon delivery licenses.

(1) The holder of a license subject to this section may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

- (a) Surrenders the previously issued license to the department;
- (b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and
- (c) Pays to the department a fee of twenty-two dollars.

(2) Unless the license holder owns all vessels identified on the application described in subsection (1)(b) of this section, the following restrictions apply to changes in vessel designation:

- (a) The department shall change the vessel designation on the license no more than four times per calendar year.
- (b) The department shall change the vessel designation on the license no more than once in any seven-day period.

**NEW SECTION.** Sec. 9. A new section is added to chapter 75.28 RCW to read as follows:

**ALTERNATE OPERATOR DESIGNATION.** This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for whiting—Puget Sound fishery licenses and emergency salmon delivery licenses.

(1) The license holder may engage in the activity authorized by a license subject to this section. The holder of a license subject to this section may also designate up to two alternate operators for the license. A person designated as

an alternate operator must possess an alternate operator license issued under sections 23 and 25 of this act.

(2) The fee to change the alternate operator designation is twenty-two dollars.

**NEW SECTION.** Sec. 10. A new section is added to chapter 75.28 RCW to read as follows:

**PERSONS WHO MAY USE A LICENSE.** (1) Only the license holder and any alternate operators designated on the license may sell or deliver food fish or shellfish under a commercial fishery license or delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of food fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) Only the license holder and any alternate operators designated on the license may operate a vessel as a charter boat.

**NEW SECTION.** Sec. 11. A new section is added to chapter 75.28 RCW to read as follows:

**TRANSFERS FROM ONE LICENSE HOLDER TO ANOTHER.** (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is twenty-two dollars.

(d) If a license is transferred from a resident to a nonresident, the transferee shall pay the difference between the resident and nonresident license fees at the time of transfer.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate.

**Sec. 12.** RCW 75.28.110 and 1989 c 316 s 3 are each amended to read as follows:

(1) The following commercial salmon ~~((fishing))~~ fishery licenses are required for the ~~((licensee))~~ license holder to use the specified gear to fish for salmon ~~((and other food fish))~~ in state waters. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065;))~~ Only a person who meets the qualifications of RCW 75.30.120 may hold a license listed in this subsection. The licenses and their annual ~~((license))~~ fees and surcharges under RCW 75.50.100 are:

<del>((Gear))</del> Fishery License	Resident Fee	Nonresident Fee	Surcharge
(a) <u>Salmon Gill Net—Grays Harbor-Columbia river</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>
(b) <u>Salmon Gill Net—Puget Sound</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>
(c) <u>Salmon Gill Net—Willapa Bay-Columbia river</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>
<del>((d))</del> <u>Salmon purse seine</u>	<del>(((\$410))</del> <u>\$454</u>	<del>(((\$820))</del> <u>\$908</u>	<u>plus \$100</u>
<del>((b))</del> <u>Gill net</u>	<u>\$275</u>	<u>\$550</u>	
<del>((e))</del> <u>Troll</u>	<u>\$275</u>	<u>\$550</u>	
<del>((d))</del> (e) <u>Salmon reef net</u>	<del>(((\$275))</del> <u>\$304</u>	<del>(((\$550))</del> <u>\$609</u>	<u>plus \$100</u>
(f) <u>Salmon troll</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated on the license under section 7 of this act.

(3)  Holders of commercial salmon ~~((fishing))~~ fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the director.

~~((3))~~ (4) A salmon troll license ~~((allows fishing in all licensing districts and))~~ includes a salmon delivery license.

~~((4))~~ (5) A ~~((separate))~~ salmon gill net license ~~((is required to fish for salmon in each of the licensing districts established in RCW 75.28.012))~~ authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

**Sec. 13.** RCW 75.28.113 and 1989 c 316 s 4 are each amended to read as follows:

(1) ~~((A person operating a commercial fishing vessel used in taking))~~ It is unlawful to deliver with a commercial fishing vessel salmon taken in offshore waters ~~((and delivering the salmon))~~ to a place or port in the state ~~((shall obtain))~~ without a salmon delivery license from the director. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The annual fee for a salmon delivery license is ~~((two hundred seventy five))~~ three hundred four dollars for residents and ~~((five hundred fifty))~~ six hundred nine dollars for nonresidents. ~~((Persons operating fishing vessels licensed))~~ The annual surcharge under RCW 75.50.100 is one hundred dollars for each license. Holders of nonsalmon delivery licenses issued under RCW 75.28.125 may apply the nonsalmon delivery license fee ((of fifty dollars)) against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 75.30.120 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW.

**Sec. 14.** RCW 75.28.116 and 1989 c 316 s 5 are each amended to read as follows:

~~((The owner of a commercial salmon fishing vessel which is))~~ A person who does not ~~((qualified))~~ qualify for a license under RCW 75.30.120 ~~((is required to))~~ shall obtain a nontransferable emergency salmon ((single)) delivery license ((in order)) to make one ~~((landing))~~ delivery of salmon taken in offshore waters. The director shall not issue ~~((a))~~ an emergency salmon ((single)) delivery license unless, as determined by the director, a bona fide emergency exists. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The license fee is one hundred ((thirty five)) forty-nine dollars for residents and two hundred ((seventy)) ninety-nine dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable.

**Sec. 15.** RCW 75.28.120 and 1989 c 316 s 6 are each amended to read as follows:

~~((The following commercial fishing licenses are required for the licensee to use the specified gear to fish for food fish other than salmon in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:~~

Gear	Resident	Nonresident
	Fee	Fee
(1) Jig	\$50	\$100
(2) Set line	\$50	\$100
(3) Set net	\$50	\$100
(4) Drag seine	\$50	\$100
(5) Gill net	\$275	\$550
(6) Purse seine	\$410	\$820
(7) Troll	\$50	\$100
(8) Bottom fish pots	\$50	\$100
(9) Lampara	\$100	\$200
(10) Dip bag net	\$50	\$100
(11) Brush weir	\$100	\$200
(12) Other gear	\$100	\$200))

(1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Baitfish Lampara	\$ 111	\$ 221	Yes	No
(b) Baitfish purse seine	\$ 454	\$ 908	Yes	No
(c) Bottom fish jig	\$ 55	\$ 111	Yes	No
(d) Bottom fish pot	\$ 55	\$ 111	Yes	No
(e) Bottom fish troll	\$ 55	\$ 111	Yes	No
(f) Carp	\$ 55	\$ 111	No	No
(g) Columbia river smelt	\$ 304	\$ 609	No	No
(h) Dog fish set net	\$ 55	\$ 111	Yes	No
(i) Emerging commercial fishery (RCW 75.30.220 (section 18 of this act))	\$ 111	\$ 221	Determined by rule	Determined by rule
(j) Food fish drag seine	\$ 55	\$ 111	Yes	No
(k) Food fish set line	\$ 55	\$ 111	Yes	No
(l) Food fish trawl— Non-Puget Sound	\$ 166	\$ 332	Yes	No
(m) Food fish trawl— Puget Sound	\$ 111	\$ 221	Yes	No

(n) <u>Herring dip bag net</u> <u>(RCW 75.30.140)</u>	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(o) <u>Herring drag seine</u> <u>(RCW 75.30.140)</u>	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(p) <u>Herring gill net</u> <u>(RCW 75.30.140)</u>	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(q) <u>Herring Lampara</u> <u>(RCW 75.30.140)</u>	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(r) <u>Herring purse seine</u> <u>(RCW 75.30.140)</u>	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(s) <u>Herring spawn-on-kelp</u> <u>(RCW 75.28.245 (as</u> <u>recodified by section</u> <u>54 of this act))</u>	<u>N/A</u>	<u>N/A</u>	<u>Yes</u>	<u>Yes</u>
(t) <u>Smelt dip bag net</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>No</u>	<u>No</u>
(u) <u>Smelt gill net</u>	<u>\$ 304</u>	<u>\$ 609</u>	<u>Yes</u>	<u>No</u>
(v) <u>Whiting—Puget Sound</u> <u>(RCW 75.30.170)</u>	<u>\$ 221</u>	<u>\$ 443</u>	<u>Yes</u>	<u>Yes</u>

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery.

Sec. 16. RCW 75.28.125 and 1989 c 316 s 7 are each amended to read as follows:

~~((A delivery license is required to deliver shellfish or food fish other than salmon taken in offshore waters to a port in the state. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,)) (1) Except as provided in subsection (2) of this section, it is unlawful to deliver with a commercial fishing vessel food fish or shellfish taken in offshore waters to a port in the state without a nonsalmon delivery license. As used in this section, "food fish" does not include salmon. The annual license fee for a nonsalmon delivery license is ((fifty)) fifty-five dollars for residents and one hundred eleven dollars for nonresidents. ((Licenses issued under RCW 75.28.113 (salmon delivery license), RCW 75.28.130(4) (crab pot, other than Puget Sound), or RCW 75.28.140(2) (trawl, other than Puget Sound) shall include a delivery license.))~~

(2) Holders of salmon troll fishery licenses issued under RCW 75.28.110, salmon delivery licenses issued under RCW 75.28.113, crab pot—Non-Puget Sound fishery licenses issued under RCW 75.28.130, food fish trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.120, and shrimp trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.130 may deliver food fish or shellfish taken in offshore waters without a nonsalmon delivery license.

(3) A nonsalmon delivery license authorizes no taking of food fish or shellfish from state waters.

Sec. 17. RCW 75.28.130 and 1989 c 316 s 8 are each amended to read as follows:

~~(The following commercial fishing licenses are required for the licensee to use the specified gear to fish for shellfish in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:~~

Gear	Resident	Nonresident
	Fee	Fee
<del>(1) Ring net</del>	<del>\$50</del>	<del>\$100</del>
<del>(2) Shellfish pots (excluding crab)</del>	<del>\$50</del>	<del>\$100</del>
<del>(3) Crab pots (Puget Sound)</del>	<del>\$50</del>	<del>\$100</del>
<del>(4) Crab pots (other than Puget Sound)</del>	<del>\$200</del>	<del>\$400</del>
<del>(5) Shellfish diver (excluding clams)</del>	<del>\$50</del>	<del>\$100</del>
<del>(6) Squid gear, all types</del>	<del>\$100</del>	<del>\$200</del>
<del>(7) Ghost shrimp gear</del>	<del>\$100</del>	<del>\$200</del>
<del>(8) Commercial razor clam license</del>	<del>\$50</del>	<del>\$100</del>
<del>(9) Geoduck diver license</del>	<del>\$100</del>	<del>\$200</del>
<del>(10) Other shellfish gear</del>	<del>\$100</del>	<del>\$200</del>

(1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
<u>(a) Burrowing shrimp</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Yes</u>	<u>No</u>
<u>(b) Crab pot— Non-Puget Sound</u>	<u>\$ 221</u>	<u>\$ 443</u>	<u>Yes</u>	<u>No</u>
<u>(c) Crab pot— Puget Sound</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
<u>(d) Crab ring net— Non-Puget Sound</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
<u>(e) Crab ring net— Puget Sound</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>



(f) <u>Dungeness crab— Puget Sound (RCW 75.30.130)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>Yes</u>
(g) <u>Emerging commercial fishery (RCW 75.30.220 (section 18 of this act))</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Determined by rule</u>	<u>Determined by rule</u>
(h) <u>Geoduck (Section 46 of this act)</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>Yes</u>	<u>Yes</u>
(i) <u>Hardshell clam mechanical harvester (RCW 75.28.280)</u>	<u>\$ 454</u>	<u>\$ 908</u>	<u>Yes</u>	<u>No</u>
(j) <u>Oyster reserve (RCW 75.28.290)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>No</u>	<u>No</u>
(k) <u>Razor clam</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>No</u>	<u>No</u>
(l) <u>Sea cucumber dive (RCW 75.30.250)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>Yes</u>
(m) <u>Sea urchin dive (RCW 75.30.210)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>Yes</u>
(n) <u>Shellfish dive</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
(o) <u>Shellfish pot</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
(p) <u>Shrimp pot— Hood Canal</u>	<u>\$ 304</u>	<u>\$ 609</u>	<u>Yes</u>	<u>No</u>
(q) <u>Shrimp trawl— Non-Puget Sound</u>	<u>\$ 166</u>	<u>\$ 332</u>	<u>Yes</u>	<u>No</u>
(r) <u>Shrimp trawl— Puget Sound</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Yes</u>	<u>No</u>
(s) <u>Squid</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Yes</u>	<u>No</u>

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery.

NEW SECTION. Sec. 18. A new section is added to chapter 75.28 RCW to read as follows:

**EMERGING COMMERCIAL FISHERY LICENSES AND PERMITS. (1)** The director may by rule designate a fishery as an emerging commercial fishery. The director shall include in the designation whether the fishery is one that requires a vessel.

(2) "Emerging commercial fishery" means the commercial taking of a newly classified species of food fish or shellfish, the commercial taking of a classified species with gear not previously used for that species, or the commercial taking of a classified species in an area from which that species has not previously been

commercially taken. Any species of food fish or shellfish commercially harvested in Washington state as of June 7, 1990, may be designated as a species in an emerging commercial fishery, except that no fishery subject to a license limitation program in chapter 75.30 RCW may be designated as an emerging commercial fishery.

(3) It is unlawful to take food fish or shellfish in a fishery designated as an emerging commercial fishery without an emerging commercial fishery license and a permit from the director. The director shall issue two types of permits to accompany emerging commercial fishery licenses: Trial fishery permits and experimental fishery permits. Trial fishery permits are governed by subsection (4) of this section. Experimental fishery permits are governed by RCW 75.30.220.

(4) The director shall issue trial fishery permits for a fishery designated as an emerging commercial fishery unless the director determines there is a need to limit the number of participants under RCW 75.30.220. A person who meets the qualifications of RCW 75.28.020 may hold a trial fishery permit. The holder of a trial fishery permit shall comply with the terms of the permit. Trial fishery permits are not transferable from the permit holder to any other person.

**Sec. 19.** RCW 75.28.280 and 1989 c 316 s 12 are each amended to read as follows:

A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, ~~((on a clam farm))~~ unless the requirements of RCW 75.20.100 are fulfilled for the proposed activity. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is four hundred ten dollars for residents and eight hundred twenty dollars for nonresidents.))~~

**Sec. 20.** RCW 75.28.290 and 1989 c 316 s 14 are each amended to read as follows:

A person who commercially takes shellfish from state oyster reserves under RCW 75.24.070 must have an oyster reserve fishery license ~~((is required for the commercial taking of shellfish from state oyster reserves. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is fifty dollars for residents and one hundred dollars for nonresidents)).~~

**Sec. 21.** RCW 75.28.095 and 1989 c 316 s 2, 1989 c 147 s 1, and 1989 c 47 s 2 are each reenacted and amended to read as follows:

(1) ~~((A charter boat license is required for a vessel to be operated as a charter boat from which food fish are taken for personal use. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual ((license)) fees and surcharges are:

<u>((Species)) License or Permit</u>	<u>((Resident)) Annual Fee (RCW 75.50.100 Surcharge)</u>		<u>((Nonresident Fee)) Governing Section</u>
	<u>Resident</u>	<u>Nonresident</u>	
(a) <del>((Food fish other than salmon)) Nonsalmon charter</del>	<del>(((\$135)) \$149</del>	<del>(((\$270)) \$299</del>	
(b) <del>Salmon ((and other food fish)) charter</del>	<del>(((\$275)) \$304 (plus \$100)</del>	<del>(((\$550)) \$609 (plus \$100)</del>	<u>RCW 75.30.065</u>
(c) <u>Salmon angler 75.30.070</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>RCW</u>
(d) <u>Salmon roe 75.28.690</u>	<u>\$ 20</u>	<u>\$ 20</u>	<u>RCW</u>

(2) Except as provided in subsection (5) of this section, it is unlawful to operate a vessel as a charter boat from which salmon or salmon and other food fish are taken without a salmon charter license designating the vessel. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065.

(3) Except as provided in subsections (2) and (5) of this section, it is unlawful to operate a vessel as a charter boat from which food fish or shellfish are taken without a nonsalmon charter license. As used in this subsection, "food fish" does not include salmon.

(4) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and ((which delivers)) that brings food fish or shellfish into state ports or ((delivers)) brings food fish or shellfish taken from state waters into United States ports. The director may specify by rule when a vessel is a "charter boat" within this definition. "Charter boat" does not mean((:

~~(a) Vessels not generally engaged in charter boat fishing which are under private lease or charter and operated by the lessee for the lessee's personal recreational enjoyment; or~~

~~(b) Vessels)) a vessel used by ((guides)) a guide for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.~~

~~((3)) (5) A charter boat licensed in Oregon ((shall be permitted to)) may fish without a Washington charter ((boat)) license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point ~~((under the same regulations as Washington charter boat operators)),~~ as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this~~

subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

~~((4) A vessel shall not engage in both charter or sports fishing and commercial fishing on the same day.))~~

**Sec. 22.** RCW 75.28.690 and 1989 c 316 s 18 are each amended to read as follows:

(1) A ~~((deckhand))~~ salmon roe license is required for a crew member on a ~~((licensed))~~ boat designated on a salmon charter ~~((boat))~~ license to sell salmon roe as provided in subsection (2) of this section. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is twenty dollars.))~~ An individual under sixteen years of age may hold a salmon roe license.

(2) A ~~((deckhand))~~ crew member on a ~~((licensed))~~ boat designated on a salmon charter ~~((boat))~~ license may sell salmon roe taken from fish caught for personal use, subject to rules of the director and the following conditions:

(a) The salmon is taken ~~((white))~~ by an angler fishing on the charter boat;

(b) The roe is the property of the angler until the roe is given to the ~~((deckhand))~~ crew member. The crew member shall notify the charter boat's passengers ~~((are notified))~~ of this fact ~~((by the deckhand))~~;

(c) The crew member sells the roe ~~((is sold))~~ to a licensed wholesale dealer; and

(d) The ~~((deckhand))~~ crew member is licensed as provided in subsection (1) of this section and has the license in possession whenever the crew member sells salmon roe ~~((is sold))~~.

NEW SECTION. **Sec. 23.** A new section is added to chapter 75.28 RCW to read as follows:

**PERSONAL LICENSES—FEES.** The director shall issue the personal licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 75.50.100 Surcharge)		Governing Section
	Resident	Nonresident	
(1) Alternate Operator	\$ 50	\$ 100	Section 25 of this act
(2) Geoduck Diver	\$ 111	\$ 221	RCW 75.28.287 (as recodified by section 54 of this act)
(3) Salmon Guide	\$ 55 (plus \$20)	\$ 554 (plus \$100)	RCW 75.28.710

**Sec. 24.** RCW 75.28.287 and 1990 c 163 s 6 are each amended to read as follows:

Every diver engaged in the commercial harvest of geoduck (~~(or other)~~) clams shall obtain a nontransferable geoduck diver license.

**NEW SECTION. Sec. 25.** A new section is added to chapter 75.28 RCW to read as follows:

**ALTERNATE OPERATOR LICENSE REQUIRED.** (1) A person who holds a commercial fishery license, delivery license, or charter license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and  
 (b) The person is designated as an alternate operator on the underlying commercial fishery license, delivery license, or charter license under section 9 of this act.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses, delivery licenses, and charter licenses under section 9 of this act.

(4) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel, to operate a vessel as a charter boat, or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state.

**Sec. 26.** RCW 75.28.710 and 1991 c 362 s 2 are each amended to read as follows:

~~((A professional salmon guide license is required for the holder)) (1) It is unlawful to offer or perform the services of a professional salmon guide in the taking of salmon for personal use in freshwater rivers and streams, other than in that part of the Columbia river below the bridge at Longview, without a professional salmon guide license. ((The annual license fees are fifty dollars for residents and five hundred dollars for nonresidents. A surcharge of twenty dollars shall be assessed on each resident guide license and a surcharge of one hundred dollars shall be assessed on each nonresident guide license for the purposes of RCW 75.50.100.))~~

(2) Only an individual at least sixteen years of age may hold a professional salmon guide license. No individual may hold more than one professional salmon guide license.

**Sec. 27.** RCW 75.30.050 and 1990 c 61 s 3 are each amended to read as follows:

(1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) The salmon charter boat fishing industry in cases involving salmon charter (~~(boat)~~) licenses or angler permits;

(b) The commercial salmon fishing industry in cases involving commercial salmon fishery licenses;

(c) The commercial crab fishing industry in cases involving dungeness crab—Puget Sound ((crab)) fishery licenses ((endorsements));

(d) The commercial herring fishery in cases involving herring ((validations)) fishery licenses;

(e) The commercial Puget Sound whiting fishery in cases involving whiting—Puget Sound ((whiting)) fishery licenses ((endorsements));

(f) The commercial sea urchin fishery in cases involving sea urchin ((endorsements to shellfish diver)) dive fishery licenses; and

(g) The commercial sea cucumber fishery in cases involving sea cucumber ((endorsements to shellfish diver)) dive fishery licenses.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050 ((and)), 43.03.060, and 43.03.065.

**Sec. 28.** RCW 75.30.065 and 1983 1st ex.s. c 46 s 141 are each amended to read as follows:

((Salmon charter boat licenses issued under RCW 75.28.095(1)(b) may be issued only to boats which)) (1) After May 28, 1977, the director shall issue no new salmon charter licenses. A person may renew an existing salmon charter license only if the person held ((a salmon charter boat)) the license sought to be renewed during the previous year or ((had transferred to the boat such a)) acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another ((boat)) person. ((A boat is entitled to only one salmon charter boat license.))

(2) Salmon charter ((boat)) licenses may be renewed each year. A salmon charter ((boat)) license which is not renewed each year shall not be renewed further.

((Salmon charter boat licenses are transferable.))

(3) Subject to the restrictions in section 11 of this act, salmon charter licenses are transferrable from one license holder to another.

**Sec. 29.** RCW 75.30.070 and 1989 c 147 s 2 are each amended to read as follows:

(1) ((In addition to a salmon charter boat license, an angler permit is required to operate a salmon)) Except as provided in subsection (3) of this section, it is unlawful to operate a vessel as a charter boat from which salmon are taken in salt water without an angler permit. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip ((and shall be issued annually without charge)). The angler permit expires if the salmon charter ((boat)) license is not renewed.

(2) Only a person who holds a salmon charter license issued under RCW 75.28.095 and 75.30.065 may hold an angler permit.

(3) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

**Sec. 30.** RCW 75.30.090 and 1983 1st ex.s. c 46 s 143 are each amended to read as follows:

A salmon charter boat may not carry more anglers than the number specified in the angler permit issued ~~((to the boat))~~ under RCW 75.30.070. Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time.

**Sec. 31.** RCW 75.30.100 and 1983 1st ex.s. c 46 s 144 are each amended to read as follows:

(1) The total number of anglers authorized by the department shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 75.30.070 are transferable. All or a portion of the permit may be transferred to another salmon charter ~~((boat))~~ license holder.

(3) The angler permit holder and proposed transferee shall notify the department ~~((shall be notified))~~ when transferring an angler permit ~~((is transferred))~~, and the department shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the department shall issue a new angler permit certificate reflecting the decrease in angler capacity.

(4) The department shall collect a fee of ten dollars for each certificate issued under ~~((this))~~ subsection (3) of this section.

**Sec. 32.** RCW 75.30.120 and 1983 1st ex.s. c 46 s 146 are each amended to read as follows:

(1) ~~((A commercial salmon fishing))~~ Except as provided in subsection (2) of this section, after May 6, 1974, the director shall issue no new commercial salmon fishery licenses or salmon delivery licenses. A person may renew an existing license ~~((issued under RCW 75.28.110 or salmon delivery permit issued under RCW 75.28.113 may be issued only to a vessel:~~

(a) ~~Which))~~ only if the person held ~~((a state commercial salmon fishing))~~ the license ~~((or salmon delivery permit))~~ sought to be renewed during the previous year or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license ~~((or permit))~~ to another ~~((vessel; and~~

(b) ~~From which food fish were caught and landed in this state or in another state during the previous year as documented by a valid fish receiving document))~~ person.

(2) Where the ~~((failure))~~ person failed to obtain the license ~~((or permit))~~ during the previous year ~~((was the result))~~ because of a license ~~((or permit))~~ suspension, the ~~((vessel))~~ person may qualify for a license ~~((or permit))~~ by establishing that the ~~((vessel))~~ person held such a license ~~((or permit))~~ during the last year in which the license ~~((or permit))~~ was not suspended.

~~((2))~~ The director may waive the landing requirement of subsection (1)(b) of this section if:

(a) ~~The vessel to which an otherwise valid license is transferred has not had the opportunity to have caught and landed salmon; and~~

~~(b) The intent of the commercial salmon vessel limitation program established under this section is not violated.)~~

(3) Subject to the restrictions in section 11 of this act, commercial salmon ~~((fishing))~~ fishery licenses and salmon delivery ~~((permits))~~ licenses are transferable from one license holder to another.

**Sec. 33.** RCW 75.30.125 and 1986 c 198 s 2 are each amended to read as follows:

Any commercial salmon ~~((fishing))~~ fishery license issued under RCW 75.28.110 or salmon delivery ~~((permit))~~ license issued under RCW 75.28.113 shall revert to the department when any government confiscates and sells the vessel ~~((to which the license or permit was issued))~~ designated on the license. Upon application of the person named on the license ~~((or permit))~~ as license holder and the approval of the director, the department shall transfer the license ~~((or permit))~~ to the ~~((original owner))~~ applicant. Application for transfer of the license ~~((or permit))~~ must be made within the calendar year ~~((in which the vessel was licensed))~~ for which the license was issued.

**Sec. 34.** RCW 75.30.130 and 1983 1st ex.s. c 46 s 147 are each amended to read as follows:

(1) It is unlawful to take dungeness crab (*Cancer magister*) in ~~((the))~~ Puget Sound ~~((licensing district))~~ without first obtaining a dungeness crab—Puget Sound ~~((crab))~~ fishery license ~~((endorsement))~~. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A dungeness crab—Puget Sound fishery license ~~((endorsement))~~ is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) ~~((Commercial crab licenses issued under RCW 75.28.130(3) endorsed for the Puget Sound licensing district may be issued only to vessels))~~ Except as provided in subsections (3) and (7) of this section, after January 1, 1982, the director shall issue no new dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) ~~((Which))~~ The person shall have held ~~((a commercial))~~ the dungeness crab—Puget Sound fishery license ~~((endorsed for the Puget Sound licensing district))~~ sought to be renewed during the previous year or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it



during the previous year, and ~~((has))~~ shall not have subsequently transferred the ~~((endorsed))~~ license to another ~~((vessel))~~ person; and

(b) ~~((From which))~~ The person shall document, by valid shellfish receiving tickets issued by the department, that one thousand pounds of dungeness crab were caught and ~~((landed in this state))~~ sold during the previous two-year period ending on December 31st of an odd-numbered year ~~((, as documented by a valid shellfish receiving ticket. This requirement shall apply to licenses for which application is made after January 1, 1984))~~:

(i) Under the license sought to be renewed; or

(ii) Under any combination of the following commercial fishery licenses that the person held when the crab were caught and sold: Crab pot—Non-Puget Sound, crab ring net—Non-Puget Sound, dungeness crab—Puget Sound. Sales under a license other than the one sought to be renewed may be used for the renewal of no more than one dungeness crab—Puget Sound fishery license.

(3) Where the ~~((failure))~~ person failed to obtain the license during the previous year ~~((was the result))~~ because of a license suspension, the ~~((vessel))~~ person may qualify for a license by establishing that the ~~((vessel))~~ person held such a license during the last year in which the license was not suspended.

~~((3))~~ (4) The director may reduce or waive the ~~((landing))~~ poundage requirement established under subsection (2)(b) of this section upon the recommendation of a review board established under RCW 75.30.050. The review board may recommend a reduction or waiver of the ~~((landing))~~ poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the ~~((landing))~~ poundage requirement. The director shall adopt rules governing the operation of the review boards and defining "extenuating circumstances."

~~((4))~~ (5) This section does not restrict the issuance of commercial crab licenses for areas other than ~~((the))~~ Puget Sound ~~((licensing district is not restricted by this section))~~ or for species other than dungeness crab.

~~((5) License endorsements issued under this section are not)~~ (6) Subject to the restrictions in section 11 of this act, dungeness crab—Puget Sound fishery licenses are transferable from one ~~((owner))~~ license holder to another ~~((owner, except from parent to child or upon the death of the owner, before July 1, 1986. This restriction applies to all changes in the vessel owner named on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel))~~.

~~((6))~~ (7) If ~~((less))~~ fewer than two hundred ~~((vessels))~~ persons are eligible for dungeness crab—Puget Sound fishery licenses ~~((endorsements))~~, the director may accept applications for new ~~((endorsements))~~ licenses. The director shall determine by random selection the successful applicants for the additional

~~((endorsements))~~ licenses. The number of additional ~~((endorsements))~~ licenses issued shall be sufficient to maintain two hundred ~~((vessels))~~ licenses in the Puget Sound dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new dungeness crab—Puget Sound ~~((crab))~~ fishery licenses ~~((endorsements))~~, based upon recommendations of a board of review established under RCW 75.30.050.

Sec. 35. RCW 75.30.140 and 1983 1st ex.s. c 46 s 148 are each amended to read as follows:

(1) ~~((In addition to a commercial fishing license, a herring validation is required to))~~ It is unlawful to fish commercially for herring in state waters without a herring fishery license. ~~((Herring validations shall be issued without charge.))~~ As used in this section, "herring fishery license" means any of the following commercial fishery licenses issued under RCW 75.28.120: Herring dip bag net; herring drag seine; herring gill net; herring lampara; herring purse seine.

(2) Except as provided in this section, ~~((permanent))~~ a herring ~~((validations))~~ fishery license may be issued only to a person who:

(a) Established initial eligibility for a ~~((permanent))~~ herring ~~((validation))~~ fishery license as provided in subsection (3) of this section or ~~((had transferred to the person a permanent herring validation))~~ acquired such a license by transfer; ~~((and))~~

(b) Held a herring fishery license during the previous year or acquired such a license by transfer; and

(c) Has not subsequently transferred the ~~((validation))~~ license to another person.

(3) A person may establish initial eligibility for a ~~((permanent))~~ herring ~~((validation))~~ fishery license by:

(a) Documenting to the department that the person landed herring during the period January 1, 1971, through April 15, 1973;

(b) Documenting to the department that the person landed herring during the period January 1, 1969, through December 31, 1970, if the person was in the armed forces of the United States during the period January 1, 1971, through April 15, 1973; or

(c) Applying to the department and qualifying for a ~~((permanent))~~ herring ~~((validation))~~ fishery license under hardship criteria established by rule of the director.

Landings may be documented only by a department fish receiving ticket.

(4) A ~~((permanent))~~ herring ~~((validation))~~ fishery license may be ~~((used))~~ issued only ~~((with))~~ for the type of fishing gear ~~((originally))~~ used to establish initial eligibility for the ~~((validation))~~ license.

(5) The director may establish rules governing the administration of this section based upon recommendations of a board of review established under RCW 75.30.050.

(6) ~~((Additional permanent and temporary validations may be granted by the department))~~ Except as provided in subsection (8) of this section, after January

1, 1995, the director shall issue no new herring fishery licenses. After January 1, 1995, a person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(7) Herring fishery licenses may be renewed each year. A herring fishery license that is not renewed each year shall not be renewed further.

(8) The department may issue additional herring fishery licenses if the stocks of herring will not be jeopardized by granting additional ~~((validations))~~ licenses. ~~((Herring validations are transferable.))~~

(9) Subject to the restrictions of section 11 of this act, herring fishery licenses are transferable from one license holder to another.

**Sec. 36.** RCW 75.28.235 and 1989 c 176 s 1 are each amended to read as follows:

The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp ~~((permits))~~ fishery licenses shall not exceed five annually. The state therefore must use its authority to regulate the number of herring spawn on kelp ~~((permits))~~ fishery licenses so that the management and economic health of the herring fishery may be improved.

**Sec. 37.** RCW 75.28.245 and 1989 c 176 s 2 are each amended to read as follows:

~~((In addition to a commercial fishing license, a herring validation, and other applicable permits required under state law.))~~ (1) A herring spawn on kelp ~~((permit))~~ fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type. ~~((All herring spawn on kelp permits shall be sold at auction to))~~

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 75.28.120 and 75.30.140; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders ~~((are required to))~~ shall identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined

in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all holders of herring ((validation holders)) fishery licenses thirty days' notice of the auction.

**Sec. 38.** RCW 75.30.160 and 1986 c 198 s 6 are each amended to read as follows:

~~((In addition to any other license, a Puget Sound commercial whiting endorsement is required to take whiting in the waters of marine fish shell fish management and catch reporting areas 24B, Port Susan; 24C, Saratoga Passage; 26A, Possession Sound; or any other area designated by the department. An annual endorsement fee is two hundred dollars for residents and four hundred dollars for nonresidents. The license shall be affixed to the licensed vessel.))~~ It is unlawful to take whiting from areas that the department designates within the waters described in RCW 75.28.110(5)(a) without a whiting—Puget Sound fishery license.

**Sec. 39.** RCW 75.30.170 and 1986 c 198 s 5 are each amended to read as follows:

~~((To obtain a Puget Sound commercial whiting endorsement, the owner of the vessel must have))~~ (1) A whiting—Puget Sound fishery license may be issued only to an individual who:

(a) Delivered at least fifty thousand pounds of whiting during the period from January 1, 1981, through February 22, 1985, as verified by fish delivery tickets ((and must have));

(b) Possessed, on January 1, 1986, all equipment necessary to fish for whiting; and

(c) Held a whiting—Puget Sound fishery license during the previous year or acquired such a license by transfer from someone who held it during the previous year.

(2) After January 1, 1995, the director shall issue no new whiting—Puget Sound fishery licenses. After January 1, 1995, only an individual who meets the following qualifications may renew an existing license: The individual shall have held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) Whiting—Puget Sound fishery licenses may be renewed each year. A whiting—Puget Sound fishery license that is not renewed each year shall not be renewed further.

**Sec. 40.** RCW 75.30.180 and 1986 c 198 s 4 are each amended to read as follows:

~~((Commercial Puget Sound whiting license endorsements issued under RCW 75.30.160 shall be valid for the owner and the vessel for which the endorsement was issued. The endorsement))~~ A whiting—Puget Sound fishery license may be transferred through gift, devise, bequest, or descent to members of the license holder's immediate family which shall be limited to spouse, children, or

stepchildren. ~~((Only a natural person may possess an endorsement. The owner of the endorsement must))~~ The holder of a whiting—Puget Sound fishery license shall be present on any vessel taking whiting under ((terms of) the ((endorsement)) license. In no instance may temporary permits be issued.

The director may adopt rules necessary to implement RCW ~~((75.30.150))~~ 75.30.160 through 75.30.180.

**Sec. 41.** RCW 75.30.210 and 1990 c 62 s 2 are each amended to read as follows:

(1) ~~((After October 1, 1990,))~~ It is unlawful to commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin ((endorsement to accompany a shellfish diver)) dive fishery license. ((A sea urchin endorsement to a shellfish diver license issued under RCW 75.28.130(5)) shall be limited to those vessels which:

~~(a) Held a commercial shellfish diver license, excluding clams, during calendar years 1988 and 1989 or had transferred to the vessel such a license;~~

~~(b) Have not transferred the license to another vessel; and~~

~~(c) Can establish, by means of dated shellfish receiving documents issued by the department, that twenty thousand pounds of sea urchins were caught and landed under the license during the period of April 1, 1986, through March 31, 1988.~~

~~Endorsements issued under this section are a new licensing condition, and the continuing license provisions of RCW 34.05.422(3) are not applicable.))~~

(2) ~~((In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea urchin endorsements to shellfish diver licenses issued under RCW 75.28.130(5) may be issued only to vessels))~~ Except as provided in subsections (3) and (6) of this section, after December 31, 1991, the director shall issue no new sea urchin dive fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) ~~((Which))~~ The person shall have held ((\*) the sea urchin ((endorsement to a shellfish diver)) dive fishery license sought to be renewed during the previous year or ((had transferred to the vessel such a) acquired the license by transfer from someone who held it during the previous year; and

(b) ~~((From which))~~ The person shall document, by valid shellfish receiving tickets issued by the department, that twenty thousand pounds of sea urchins were caught and ((landed in this state)) sold under the license sought to be renewed during the two-year period ending March 31 of ((\*\*)) the most recent odd-numbered year((, as documented by valid shellfish receiving documents issued by the department)).

(3) ~~((failure))~~ the person failed to obtain the license during the previous year ((was the result)) because of a license suspension or revocation by the department or the court, the ((vessel)) person may qualify for a license by establishing that the ((vessel)) person held such a license during the last year in which ((†) the person was eligible.

~~((3))~~ (4) The director may reduce or waive ~~((any landing))~~ the poundage requirement ~~((established under))~~ of subsection (2)(b) of this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the ~~((landing))~~ poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the ~~((landing))~~ poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

~~((4))~~ (5) Sea urchin ~~((endorsements issued under this section))~~ dive fishery licenses are not transferable from one ~~((owner))~~ license holder to another ~~((owner))~~, except from parent to child, or from spouse to spouse during marriage or as a result of marriage dissolution, or upon the death of the ~~((owner))~~ license holder. ~~((This restriction applies to all changes in the vessel owner's name on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel.~~

~~(5))~~ (6) If ~~((less))~~ fewer than forty-five ~~((vessels))~~ persons are eligible for sea urchin ~~((endorsements))~~ dive fishery licenses, the director may accept applications for new ~~((endorsements))~~ licenses. The director shall determine by random selection the successful applicants for the additional ~~((endorsements))~~ licenses. The number of additional ~~((endorsements))~~ licenses issued shall be sufficient to maintain up to forty-five ~~((vessels))~~ licenses in the sea urchin dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin ~~((endorsements))~~ dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

**Sec. 42.** RCW 75.30.220 and 1990 c 63 s 2 are each amended to read as follows:

(1) ~~((The director may by rule designate a fishery as an emerging commercial fishery.~~

~~(2))~~ The director may issue experimental fishery permits for commercial harvest in an emerging commercial fishery for which the director has determined there is a need to limit the number of participants. The director shall determine by rule the number and qualifications of participants for such experimental fishery permits. Only a person who holds an emerging commercial fishery license issued under section 18 of this act and who meets the qualifications established in those rules may hold an experimental fishery permit. The director shall limit the number of these permits to prevent habitat damage, ensure conservation of the resource, and prevent overharvesting. In developing rules for limiting participation in an emerging or expanding commercial fishery, the director shall appoint a five-person advisory board representative of the affected

fishery industry. The advisory board shall review and make recommendations to the director on rules relating to the number and qualifications of the participants for such ~~((supplemental))~~ experimental fishery permits.

~~((3))~~ (2) RCW 34.05.422(3) does not apply to applications for new experimental fishery permits.

~~((4) Upon request of a vessel owner, the director may allow the vessel owner to temporarily transfer the experimental fishery permit to a leased or rented vessel. The director shall allow such temporary transfers only when the vessel holding the experimental fishery permit is disabled.))~~

(3) Experimental fishery permits are not transferable from the permit holder to any other person.

**Sec. 43.** RCW 75.30.240 and 1990 c 63 s 4 are each amended to read as follows:

Within five years after adopting rules to govern the number and qualifications of participants in an emerging commercial fishery, the director shall provide to the appropriate senate and house of representatives committees a report which outlines the status of the fishery and a recommendation as to whether a separate commercial fishery license, license fee, or ~~((endorsement and/or a))~~ limited harvest program should be established for that fishery.

**Sec. 44.** RCW 75.30.250 and 1990 c 61 s 2 are each amended to read as follows:

~~(1) ((After April 30, 1990,))~~ It is unlawful to commercially take while using shellfish diver gear any species of sea cucumber without first obtaining a sea cucumber ~~((endorsement to accompany a shellfish diver))~~ dive fishery license.

~~((A))~~ (2) Except as provided in subsection (6) of this section, after December 31, 1991, the director shall issue no new sea cucumber ~~((endorsement to a shellfish diver))~~ dive fishery licenses ~~((issued under RCW 75.28.130(5) shall be limited to those vessels which)).~~ Only a person who meets the following qualifications may renew an existing license:

~~(a) ((Held a commercial shellfish diver license (excluding elams), between January 1, 1989, and December 31, 1989, or had transferred to the vessel such a license, and held a permit for harvest of sea cucumbers in 1989;~~

~~(b) Have not transferred the license to another vessel;~~

~~(c) Can establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers were made under the license during the period of January 1, 1988, through December 31, 1989; and~~

~~(d) Endorsements issued under this section are a new licensing condition, and the continuing license provisions of RCW 34.05.422(3) are not applicable.~~

~~(2) In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea cucumber endorsements to shellfish diver licenses issued under RCW 75.28.130(5) may be issued only to vessels which:~~

~~((a))~~ The person shall have held ((a)) the sea cucumber ~~((endorsement to a shellfish diver))~~ dive fishery license sought to be renewed during the previous

two years or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it during the previous year; and

(b) ~~((Can))~~ The person shall establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers totaling at least ten thousand pounds were made under the license during the previous two-year period ending December 31 of the odd-numbered year.

(3) Where ~~((failure))~~ the person failed to obtain the license during either of the previous two years ~~((was the result))~~ because of a license suspension by the department or the court, the ~~((vessel))~~ person may qualify for a license by establishing that the ~~((vessel))~~ person held such a license ~~((and a sea cucumber endorsement))~~ during the last year in which ~~((it))~~ the person was eligible.

~~((2))~~ (4) The director may reduce or waive any landing or poundage requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of any landing or poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the landing or poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

~~((4))~~ (5) Sea cucumber ~~((endorsements issued under this section))~~ dive fishery licenses are not ~~((transferable))~~ transferable from one ~~((owner))~~ license holder to another ~~((owner))~~ except from parent to child, from spouse to spouse during marriage or as a result of marriage dissolution, or upon death of the ~~((owner))~~ license holder. ~~((This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged.~~

~~((5))~~ (6) If ~~((less))~~ fewer than fifty ~~((vessels))~~ persons are eligible for sea cucumber ~~((endorsements))~~ dive fishery licenses, the director may accept applications for new ~~((endorsements))~~ licenses from those persons who can demonstrate two years' experience in the Washington state sea cucumber ~~((diver))~~ dive fishery. The director shall determine by random selection the successful applicants for the additional ~~((endorsements))~~ licenses. The number of additional ~~((endorsements))~~ licenses issued shall be sufficient to maintain up to fifty ~~((vessels))~~ licenses in the sea cucumber dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea cucumber ~~((endorsements))~~ dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

NEW SECTION. Sec. 45. A new section is added to chapter 75.30 RCW to read as follows:

VESSEL-TO-PERSON TRANSITION. (1) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a salmon charter boat license under section 141, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 salmon charter license under section 28(1) of this act.



(2) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 commercial salmon fishing license or salmon delivery permit under section 146, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 commercial salmon fishery license or salmon delivery license under section 32(1) of this act.

(3) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 Puget Sound crab license endorsement under section 147, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 dungeness crab—Puget Sound fishery license under section 34(2) of this act.

(4) A person who on December 31, 1993, qualifies for a 1994 herring validation under section 148, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 herring fishery license under section 35(2) of this act.

(5) A person who on December 31, 1993, qualifies for a 1994 Puget Sound commercial whiting endorsement under section 5, chapter 198, Laws of 1986 shall be deemed to qualify for a 1994 whiting—Puget Sound fishery license under section 39(1) of this act.

(6) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 sea urchin endorsement to a shellfish diver license under section 2, chapter 62, Laws of 1990 shall be deemed to qualify for a 1994 sea urchin dive fishery license under section 41(2) of this act. Any sea urchin landings made from the vessel between April 1, 1993, and December 31, 1993, shall be deemed to be sales under section 41(2)(b) of this act.

(7) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 sea cucumber endorsement to a shellfish diver license under section 2, chapter 61, Laws of 1990 shall be deemed to qualify for a 1994 sea cucumber dive fishery license under section 44(2) of this act.

(8) This section shall expire January 1, 1995.

**NEW SECTION.** Sec. 46. A new section is added to chapter 75.30 RCW to read as follows:

**GEODUCK FISHERY LICENSES.** (1) It is unlawful to harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 75.24.100. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The department shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the department shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

**Sec. 47.** RCW 75.08.011 and 1990 c 63 s 6 and 1990 c 35 s 3 are each reenacted and amended to read as follows:

As used in this title or rules of the director, unless the context clearly requires otherwise:

- (1) "Director" means the director of fisheries.
- (2) "Department" means the department of fisheries.
- (3) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations, including corporations and partnerships.
- (4) "Fisheries patrol officer" means a person appointed and commissioned by the director, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

(5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of

natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(6) "To fish," "to harvest," and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.

(11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or

reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks.

(19) "Open season" means those times, manners of taking, and places or waters established by rule of the director for the lawful fishing, taking, or possession of food fish or shellfish. "Open season" includes the first and last days of the established time.

(20) (~~"Emerging commercial fishery" means any commercial fishery:~~

~~(a) For food fish or shellfish so designated by rule of the director, except that no species harvested under a license limitation program contained in chapter 75.30 RCW may be designated as a species in an emerging commercial fishery.~~

~~(b) Which will include, subject to the limitation in (a) of this subsection, all species harvested for commercial purposes as of June 7, 1990, and the future commercial harvest of all other species in the waters of the state of Washington.~~

~~(21) "Experimental fishery permit" means a permit issued by the director to allow the recipient to engage in an emerging commercial))~~ "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.

(21) "Limited-entry license" means a license subject to a license limitation program established in chapter 75.30 RCW.

**Sec. 48.** RCW 75.08.230 and 1989 c 176 s 4 are each amended to read as follows:

(1) Except as provided in this section, state and county officers receiving the following moneys shall deposit them in the state general fund:

- (a) The sale of licenses required under this title;
- (b) The sale of property seized or confiscated under this title;
- (c) Fines and forfeitures collected under this title;
- (d) The sale of real or personal property held for department purposes;
- (e) Rentals or concessions of the department;
- (f) Moneys received for damages to food fish, shellfish or department property; and
- (g) Gifts.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the director shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon and salmon eggs by the department, to the extent these proceeds exceed estimates in the budget approved by the

legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for hatchery operations partially or wholly financed by sources other than state general revenues or for purposes of processing human consumable salmon for disposal.

(6) Moneys received by the director under RCW 75.08.045, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp (~~(permits)~~) fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement.

NEW SECTION. Sec. 49. A new section is added to chapter 75.12 RCW to read as follows:

It is unlawful to use a vessel in both charter or recreational fishing and commercial fishing on the same day.

Sec. 50. RCW 75.28.134 and 1989 c 316 s 9 are each amended to read as follows:

~~((1) In addition to a shellfish pot license, a Hood Canal shrimp endorsement is required to take shrimp commercially in that portion of Hood Canal lying south of the Hood Canal floating bridge. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual endorsement fee is two hundred twenty five dollars for a resident and four hundred fifty dollars for a nonresident.~~

~~(2) Not~~) It is unlawful to use more than fifty shrimp pots (~~(may be used)~~) while commercially fishing for shrimp in that portion of Hood Canal lying south of the Hood Canal floating bridge.

Sec. 51. RCW 75.24.100 and 1984 c 80 s 2 are each amended to read as follows:

(1) ~~((The director may issue licenses, with the approval of the commissioner of public lands, for the commercial harvesting of geoduck clams from specific tracts of beds of navigable waters for which harvest rights have been granted by the department of natural resources. The director shall not authorize commercial harvesting on))~~ It is unlawful to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. It is unlawful to commercially harvest geoduck clams from bottoms (~~(which)~~) that are shallower than eighteen feet below mean lower low water (0.0. ft.), or (~~(which)~~) that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two

hundred yards seaward from and parallel to the line of ordinary high tide. ~~((If the director determines that the number of units of gear is sufficient to harvest the known available crop and that additional units of gear might prove damaging to the resource or its habitat, the director may suspend the issuance of additional licenses until the director determines there is need for additional units of gear to achieve a sustained harvest.))~~ This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

~~((3) A person, including the person's agents or representatives, who holds a license under subsection (1) of this section shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). A violation of these regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of the license following a hearing as provided for in chapter 34.05 RCW. A license shall not be suspended or revoked if the violation has been corrected within ten days of receipt of written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the licensee is the holder of a tract license and contracts with another person for the harvesting of geoducks, the license shall not be suspended or canceled if the licensee terminates its business relationship with such entity until compliance with this subsection is secured.))~~

**Sec. 52.** RCW 75.28.070 and 1983 1st ex.s. c 46 s 110 are each amended to read as follows:

~~((Clam or oyster farm, oyster reserve, and))~~ Wholesale fish dealer licenses shall be displayed at the business premises of the licensee.

**Sec. 53.** RCW 75.50.100 and 1990 c 58 s 3 are each amended to read as follows:

The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment

procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A surcharge of one dollar shall be collected on each recreational salmon license sold in the state. A surcharge of one hundred dollars shall be collected on each commercial salmon (~~(fishing)~~) fishery license, each salmon delivery license, and each salmon charter (~~((boat "salmon and other food fish"))~~) license sold in the state. The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The (~~(department)~~) director shall adopt rules to implement this section pursuant to chapter 34.05 RCW.

NEW SECTION. Sec. 54. (1) RCW 75.28.070 as amended by section 52 of this act is recodified within chapter 75.28 RCW to follow RCW 75.28.300.

(2) RCW 75.28.134 as amended by section 50 of this act is recodified as a section in chapter 75.12 RCW.

(3) RCW 75.28.235 as amended by section 36 of this act is recodified as a section in chapter 75.30 RCW.

(4) RCW 75.28.245 as amended by section 37 of this act is recodified as a section in chapter 75.30 RCW.

(5) RCW 75.28.287 as amended by section 24 of this act is recodified within chapter 75.28 RCW to follow RCW 75.28.710.

NEW SECTION. Sec. 55. RCW 75.30.150 is decodified.

NEW SECTION. Sec. 56. The following acts or parts of acts are each repealed:

(1) RCW 75.28.012 and 1983 1st ex.s. c 46 s 102, 1971 ex.s. c 283 s 2, & 1957 c 171 s 1;

(2) RCW 75.28.035 and 1989 c 316 s 1, 1983 1st ex.s. c 46 s 107, 1959 c 309 s 9, & 1955 c 12 s 75.28.100;

(3) RCW 75.28.060 and 1983 1st ex.s. c 46 s 109, 1971 ex.s. c 283 s 4, 1965 ex.s. c 30 s 1, 1959 c 309 s 8, 1955 c 212 s 3, & 1955 c 12 s 75.28.060;

(4) RCW 75.28.140 and 1989 c 316 s 10, 1983 1st ex.s. c 46 s 121, 1977 ex.s. c 327 s 7, 1971 ex.s. c 283 s 8, 1965 ex.s. c 73 s 5, 1959 c 309 s 13, & 1955 c 12 s 75.28.140; and

(5) RCW 75.28.255 and 1989 c 316 s 11, 1983 1st ex.s. c 46 s 122, & 1955 c 212 s 5.

**NEW SECTION.** **Sec. 57.** Section headings as used in this act do not constitute any part of the law.

**NEW SECTION.** **Sec. 58.** This act shall take effect January 1, 1994.

**NEW SECTION.** **Sec. 59.** 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 Senate April 19, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 341

[Engrossed Substitute Senate Bill 5157]

### STATUTORY ATTORNEYS' FEES INCREASED

Effective Date: 7/25/93

AN ACT Relating to attorneys' fees; and amending RCW 12.20.060.

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

**Sec. 1.** RCW 12.20.060 and 1985 c 240 s 2 are each amended to read as follows:

When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his or her costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees of (~~fifty~~) one hundred twenty-five dollars as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he or she obtains, exclusive of costs, a judgment in the sum of (~~twenty-five~~) fifty dollars or more.

Passed the Senate April 22, 1993.

Passed the House April 7, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.



## CHAPTER 342

[Substitute Senate Bill 5176]

## STUDY OF METHODS OF PAYING PUBLIC ASSISTANCE RECIPIENTS

Effective Date: 7/25/93

AN ACT Relating to the cashing of government issued checks or warrants; and creating a new section.

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

**NEW SECTION. Sec. 1.** The supervisor of banking and the supervisor of savings and loan in conjunction with the state treasurer's office and the department of social and health services shall study methods by which the state of Washington can facilitate the movement of funds to individuals who receive public assistance including but not limited to: Methods to limit the fees charged by financial institutions and other entities for the cashing of government checks and warrants; methods to ensure that presenters of government checks and warrants are properly identified; methods to encourage the offering by financial institutions of low cost checking accounts; and methods to encourage the development and use of debit cards and similar automated systems for the transfer of government funds to persons receiving public assistance. The supervisor of banking and supervisor of savings and loan shall report their findings and recommendations to the legislature by January 1, 1994.

Passed the Senate April 20, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 343

[Second Substitute Senate Bill 5239]

## CENTRALIZATION OF POISON INFORMATION SERVICES

Effective Date: 7/25/93

AN ACT Relating to poison information centers; amending RCW 18.76.010, 18.76.030, and 18.76.060; adding new sections to chapter 18.76 RCW; creating a new section; and repealing RCW 18.76.040.

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

**Sec. 1.** RCW 18.76.010 and 1987 c 214 s 16 are each amended to read as follows:

The legislature finds that accidental and purposeful exposure to drugs, poisons, and ~~((poisonous))~~ toxic substances continues to be a severe health problem in the state of Washington. It further finds that a significant reduction in the consequences of such accidental exposures ~~((have))~~ has occurred as a result of the services provided by poison information centers.

The purpose of this chapter is to reduce morbidity and mortality associated with overdose and poisoning incidents by providing emergency telephone

assistance and treatment referral to victims of such incidents, by providing immediate treatment information to health care professionals, and public education and prevention programs. Further, the purpose is to improve utilization of drugs by providing information to health professionals relating to appropriate therapeutic drug use.

The legislature recognizes that enhanced cooperation between the emergency medical system and poison control centers will aid in responding to emergencies resulting from exposure to drugs, poisons, and ~~((poisonous))~~ toxic substances, and that, by providing telephone assistance to individuals with possible exposure to these substances, the need for emergency room and professional office visits will be reduced. As a result the cost of health care to those who may have exposures to drugs, poisons, and toxic substances will be avoided and appropriate treatment will be assured.

**Sec. 2.** RCW 18.76.030 and 1987 c 214 s 17 are each amended to read as follows:

The department shall, in a manner consistent with this chapter, provide support for the state-wide program of poison and drug information services ~~((conducted by poison information centers located in the cities of Seattle and Spokane and satellite units located in the cities of Tacoma and Yakima)).~~ These services shall, no later than June 30, 1993, be centralized in and coordinated by a single nonprofit center to be located in a place determined by the secretary. The services of this ~~((program))~~ center shall be:

(1) Twenty-four hour emergency telephone management and treatment referral of victims of poisoning and overdose incidents, to include determining whether treatment can be accomplished at the scene of the incident or transport to an emergency treatment or other facility is required, and carrying out telephone follow-up to assure that adequate care is provided;

(2) Providing information to health professionals involved in management of poisoning and overdose victims;

(3) Coordination and development of community education programs designed to inform the public and members of the health professions of poison prevention and treatment methods~~((and~~

~~(4) Information to health professionals regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions))~~ and to improve awareness of poisoning and overdose problems, occupational risks, and environmental exposures; and

(4) Coordination of outreach units whose primary functions shall be to inform the public about poison problems and prevention methods, how to utilize the poison center, and other toxicology issues.

**NEW SECTION. Sec. 3.** A new section is added to chapter 18.76 RCW to read as follows:

The department shall establish a system for consulting with other state and local agency programs concerned with poisons and poisonings, incidents

involving exposures to potentially poisonous substances, and other toxicological matters to develop the most coordinated and consistent response to such situations as is reasonably possible.

**Sec. 4.** RCW 18.76.060 and 1987 c 214 s 21 are each amended to read as follows:

(1) A person may not act as a poison center medical director or perform the duties of poison information specialists of a poison information center without being certified by the secretary under this chapter.

(2) Notwithstanding subsection (1) of this section, if a poison center medical director terminates certification or is decertified, that poison center medical director's authority may be delegated by the department to any other person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW for a period of thirty days, or until a new poison center medical director is certified, whichever comes first.

NEW SECTION. **Sec. 5.** A new section is added to chapter 18.76 RCW to read as follows:

The center may receive gifts, grants, and endowments from public or private sources that may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the center and spend gifts, grants, or endowments or any income from the public or private sources according to their terms.

NEW SECTION. **Sec. 6.** RCW 18.76.040 and 1987 c 214 s 18 & 1980 c 178 s 3 are each repealed.

NEW SECTION. **Sec. 7.** If specific funding for the purposes of this act is not provided by June 30, 1993, this act shall be null and void.

Passed the Senate March 11, 1993.

Passed the House April 25, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 344

[Senate Bill 5241]

### BINGO AND CHARITABLE GAMBLING—GAMBLING COMMISSION'S POWERS AND DUTIES MADE PERMISSIVE

Effective Date: 6/1/93

AN ACT Relating to gambling; amending RCW 9.46.070; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 9.46.070 and 1987 c 4 s 38 are each amended to read as follows:

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less

than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission may require fingerprinting and background checks on any persons seeking licenses under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross

income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo(~~(: PROVIDED, That)~~). In establishing limitations pursuant to this subsection the commission shall take into account (i) the nature, character, and scope of the activities of the licensee; (ii) the source of all other income of the licensee; and (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0281(4);

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter; and

(20) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993.

Passed the Senate April 20, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 345

[Substitute Senate Bill 5263]

### MILK MARKETING—REGULATION REVISED

Effective Date: 7/25/93

AN ACT Relating to the marketing of milk; and amending RCW 15.35.010, 15.35.030, 15.35.060, 15.35.080, 15.35.070, 15.35.100, 15.35.105, 15.35.110, 15.35.115, 15.35.150, and 15.35.250.

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

Sec. 1. RCW 15.35.010 and 1971 ex.s. c 230 s 1 are each amended to read as follows:

This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pricing and pooling among producers and processors of milk and milk products.

**Sec. 2.** RCW 15.35.030 and 1991 c 239 s 1 are each amended to read as follows:

It is hereby declared that:

- (1) Milk is a necessary article of food for human consumption;
- (2) The production, distribution, and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;
- (3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of ~~((commodities))~~ adequate supplies of pure and wholesome milk and milk products necessary to its citizens, ~~((including milk))~~ to promote competitive prices, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;
- (4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;
- (5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary.

**Sec. 3.** RCW 15.35.060 and 1991 c 239 s 2 are each amended to read as follows:

The purposes of this chapter are to:

- (1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary to prevent disorderly marketing of milk due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;
- (2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter, in accordance with chapter 34.05 RCW, which provide for pricing and pooling arrangements and declare such plans in effect for any marketing area;
- (3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers.

**Sec. 4.** RCW 15.35.080 and 1992 c 58 s 1 are each amended to read as follows:

For the purposes of this chapter:

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



(2) "Director" means the director of the department or the director's duly appointed representative;

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state or another state comprising one or more counties or parts thereof, (~~or one or more cities or towns or parts thereof~~) where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk from cows as defined in RCW 15.36.011 (~~as enacted or hereafter amended~~) and rules adopted thereunder;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant, as that term is defined in RCW 15.36.040 (~~as enacted or hereafter amended~~) and rules adopted thereunder:

(a) Who receives milk in an unprocessed state from dairy farms, and who processes milk into milk or milk products; and

(b) Whose milk plant is located within the state or from whose milk plant milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW (~~as enacted or hereafter amended~~) or, if the director so provides by rule, a person who markets to a milk dealer milk produced under a grade A permit issued by another state;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) The terms "plan," "market area and pooling arrangement," "market area pooling plan," "market area and pooling plan," "market pool," and "market plan" all have the same meaning;

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers.

**Sec. 5.** RCW 15.35.070 and 1991 c 239 s 3 are each amended to read as follows:

It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish wholesale or retail prices for ((milk or)) processed milk products.

**Sec. 6.** RCW 15.35.100 and 1991 c 239 s 6 are each amended to read as follows:

Subject to the provisions of this chapter (~~and the specific provisions of any marketing plan established thereunder~~), the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

(b) Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

(c) Determine what constitutes a natural milk market area;

(d) Establish quota systems within marketing plans, and to determine by using uniform rules, what portion of the milk produced by each producer ((subject to the provisions of a marketing plan shall be marketable in fluid form and what proportion so produced shall be considered as surplus; such determination shall also apply to milk dealers who purchase or receive milk, for sale or distribution in such marketing area, from plants whose producers are not subject to such pooling arrangements)) shall be assigned to each quota classification;

(e) Provide for the pooling of minimum class values from the sales of each class of milk to milk dealers, and the equalization of returns to producers;

(f) Provide and establish market pools for a designated market area with such rules (~~and regulations~~) as the director may adopt;

(g) Employ an executive officer, who shall be known as the milk pooling administrator;

(h) Employ such persons or contract with such entities as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(i) Determine by rule, what portion of any increase in the ~~((demand for fluid milk subject to a pooling arrangement and marketing plan providing for))~~ available quotas shall be assigned to new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the

provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW (~~as enacted or hereafter amended~~).

(3) To make, adopt, and enforce all rules necessary to carry out the purposes and policies of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules(~~as enacted or hereafter amended: PROVIDED, That~~). Nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state.

**Sec. 7.** RCW 15.35.105 and 1991 c 239 s 7 are each amended to read as follows:

(1) In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and 15.35.100, the director shall, in addition to other appropriate criteria, consider the:

~~((1))~~ (a) Cost of producing fluid milk for human consumption;

~~((2))~~ (b) Transportation costs;

~~((3))~~ (c) Milk prices in states or regions outside of the state that influence prices within the marketing areas;

~~((4))~~ (d) Demand for fluid milk for human consumption; ~~and~~

~~((5))~~ (e) Alternative enterprises available to producers; and

(f) Economic impact on milk dealers.

(2) A milk dealer who believes that actual competition from outside the marketing area is having a significant economic impact on that milk dealer, may petition the director for a public hearing on an expedited basis to consider whether the minimum milk price in the market plan should be changed relative to the milk price to a competitor located outside the state plus transportation costs for that competitor to compete with the petitioning milk dealer.

(a) To be considered, the petition must identify the specific action requested, and must be accompanied by a statement summarizing the facts and evidence that would be provided at a public hearing by or on behalf of the petitioner to support the need for the requested action, including an identification of circumstances that have changed since the last rule-making proceeding at which the minimum price was established.

(b) Within twenty-one days of receiving the petition, the director shall either:

(i) Adopt rules on an emergency basis, in accordance with RCW 34.05.350;

(ii) File, and distribute to all milk dealers and other interested parties, notice that a hearing will be held within sixty days of receiving the petition;

(iii) Advise the petitioner in writing that the request for rule making is denied, and explain the reasons for the denial; or

(iv) Advise the petitioner in writing that the petition provides insufficient information from which to find that rule making should be initiated, and request that the petition be resubmitted with additional information.

(c) Except as otherwise specifically provided in this section, this petition must be handled in accordance with RCW 34.05.330, and the rule-making procedures of chapter 34.05 RCW.

(3) The director may adopt rules of practice or procedure with respect to the proceedings.

**Sec. 8.** RCW 15.35.110 and 1992 c 58 s 4 are each amended to read as follows:

(1) The director, either upon his or her own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should be established, a referendum of affected individual producers and milk dealers shall be conducted by the department.

(2) In order for the director to establish a market area and pooling plan:

(a) Sixty-six and two-thirds percent of the producers and producer-dealers that vote must be in favor of establishing a market area and pooling plan;

(b) Sixty-six and two-thirds percent of the milk dealers and producer-dealers that vote must be in favor of establishing a market area and pooling plan; and

(c) Producer-dealers providing notice to the director under RCW 15.35.115(1), shall be authorized to vote both as producers and as milk dealers.

(3) Except as provided in subsection (4) of this section, the director, within ~~((sixty))~~ ninety days from the date the results of ~~((the))~~ a referendum approved under subsection (2) of this section are filed with the secretary of state, shall adopt rules to establish a market pool in the market area, as provided for in this chapter. In conducting hearings on rules proposed for adoption under this subsection, the director shall invite public comment on whether milk regulation similar to the market area pooling plan proposed in the rules exists in neighboring states and whether a lack of such milk regulation in neighboring states would render such a market area pooling plan in this state ineffective or impractical.

(4) If, following hearings held under subsection (3) of this section, the director determines that the lack of milk regulation in neighboring states similar to the market area pooling plan proposed for this state would render such a pooling arrangement in this state ineffective or impractical, the director shall so state in writing. The director shall file the statement with the code reviser for publication in the Washington State Register. In such a case, a market area pooling plan shall not be established in the market area under subsection (3) of this section based upon the referendum that precipitated the hearings.

If the director determines that such a lack of milk regulation in neighboring states would not render such a market area pooling plan ineffective or impractical in this state, the director shall adopt rules in accordance with subsection (3) of this section.

(5) If fifty-one percent of the producers and producer-dealers voting representing fifty-one percent of the milk produced and fifty-one percent of the milk dealers and producer-dealers in the market area vote to terminate a pooling

plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement.

~~((4))~~ (6) A referendum of affected producers, producer-dealers, and milk dealers shall be conducted only when a market area pooling arrangement is to be established. Only producers, milk dealers, and producer-dealers who are subject to the plan may vote on the termination of a pooling plan.

**Sec. 9.** RCW 15.35.115 and 1992 c 58 s 2 are each amended to read as follows:

(1) Not less than sixty days before a referendum creating a market area and pooling plan with quotas is to be conducted under RCW 15.35.110, the director shall notify each producer-dealer regarding the referendum. Any producer-dealer may choose to vote on the referendum and each choosing to do so shall notify the director in writing of this choice not later than thirty days before the referendum is conducted. Such a producer-dealer and any person who becomes a producer-dealer or producer by acquiring the quota of such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the sales of milk in fluid form from the producer facilities during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated milk dealer under the terms of such an approved plan. RCW 15.35.310(1) does not apply to a producer-dealer who is subject to regulation under this subsection.

(2) If a person was not a producer-dealer at the time notice was provided to producer-dealers under subsection (1) of this section regarding a referendum on a proposed market area and pooling plan with quotas, the plan was approved by referendum, and the person subsequently became a producer-dealer (other than by virtue of the person's acquisition of the quota of a producer-dealer who is fully regulated under the plan), the person is subject to all of the terms of the plan for producers and milk dealers during the duration of the plan and RCW 15.35.310(1) does not apply to such a person with regard to that plan.

(3) This subsection applies: To a person who was a producer-dealer at the time the notice was provided to producer-dealers under subsection (1) of this section regarding a referendum which was approved and who did not notify the director under subsection (1) of this section to vote in that referendum; and to a person who acquires the facility of such a person.

If such a person's sales of milk in fluid form subsequent to the adoption of the plan increases such that those sales in any year are more than fifty percent greater than the sales of milk in fluid form from the producer facilities during any of the previous five years, RCW 15.35.310(1) does not apply to that person with regard to that plan. Such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the producer-dealer's sales of milk in fluid form during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated dealer under the terms of such an approved plan.

If changes are made, on a market area-wide basis, to the quotas established under the plan, the director shall by rule adjust the fifty percent limitation provided by this section by an equivalent amount.

**Sec. 10.** RCW 15.35.150 and 1992 c 58 s 5 are each amended to read as follows:

(1) Under a market pool and as used in this section, "quota" means a producer's or producer-dealer's portion of the total sales of milk ~~((in fluid form))~~ in a market area ~~((plus a reserve determined by the director))~~ in fluid form or, in the director's discretion, in other forms.

(2) The director may in each market area subject to a market plan establish each producer's and each producer-dealer's initial quota in the market area. Such initial quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record. In no case shall a producer-dealer receive as a quota an amount which is less than his or her fluid milk sales for the reference period used by the director in determining quotas for other producers.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new increase in ~~((fluid milk sales))~~ available quota in a reasonable proportion. The director may establish a method to proportionately decrease quota allocations in the event decreases in ~~((fluid))~~ milk ~~((consumption))~~ usage occur.

All subsequent changes or new quotas issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW.

**Sec. 11.** RCW 15.35.250 and 1991 c 239 s 15 are each amended to read as follows:

(1) There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his or her agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this ~~((section))~~ subsection and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

(2) In the event a producer's milk dealer does not provide milk testing in a state-certified laboratory, the director may levy an additional assessment on all such milk, not to exceed three cents per one hundred pounds of milk, to be paid by the producer of such milk. Such assessment shall be collected by the first

milk dealer who receives or handles such milk from any producer or the producer's agent subject to the marketing plan and shall be paid to the director for deposit into the agricultural local fund. Moneys from such assessments shall be used to provide testing of the milk in a state-certified laboratory.

The amount to be assessed and paid to the director under this subsection shall be determined by the director within the limits prescribed by this subsection.

(3) Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court.

Passed the Senate April 17, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 346

[Engrossed Senate Bill 5280]

### CONTRACTORS—STUDY ON NEED FOR ADDITIONAL REGULATION

**Effective Date:** 7/25/93

AN ACT Relating to certificates of competency for registered contractors; and creating a new section.

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

**NEW SECTION. Sec. 1.** The director of the department of labor and industries shall conduct a study to determine whether there is a need for increased regulation, such as a voluntary certificate of competency program, of general and specialty contractors registered under chapter 18.27 RCW. In conducting the study, the director shall consult with representatives of the following construction classifications: Commercial/retail construction; highway/industrial construction; municipal/utility construction; marine construction; residential single-family construction; and residential multifamily construction. The director shall also consult with representatives of state and local governmen-

tal agencies and members of the general public who are familiar with the business and trade of construction.

No later than February 1, 1994, the director shall present findings and recommendations to the appropriate legislative committees concerning whether contractors should be subject to increased regulation by the state, such as a voluntary certificate of competency program.

The study and recommendations of the director shall be guided by the principle that increased regulation by the state is appropriate only when: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential harm is easily recognizable and not remote or dependent upon tenuous argument; the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional responsibility; and the public cannot be effectively protected by other means in a more cost-beneficial manner.

Passed the Senate April 20, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 347

[Engrossed Substitute Senate Bill 5307]

### PROHIBITION ON FIREARMS AND WEAPONS ON SCHOOL PREMISES

Effective Date: 7/25/93

AN ACT Relating to student safety and discipline; amending RCW 9.41.280, 28A.635.060, and 10.31.100; adding a new section to chapter 28A.320 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 9.41.280 and 1989 c 219 s 1 are each amended to read as follows:

(1) It is unlawful for ~~((an elementary or secondary school student under the age of twenty-one knowingly))~~ a person to carry onto public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

- (a) Any firearm; or
- (b) Any dangerous weapon as defined in RCW 9.41.250; or
- (c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means; or
- (d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect; or
- (e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas.



(2) Any such ~~((student))~~ person violating subsection (1) of this section is guilty of a gross misdemeanor.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. However, any violation of subsection (1)(a) of this section by an elementary or secondary school student shall result in expulsion in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

(3) Subsection (1) of this section does not apply to:

(a) Any student or employee of a private military academy when on the property of the academy; ~~((or))~~

(b) Any ~~((student))~~ person engaged in military, law enforcement, or school district security activities ~~((, sponsored by the federal or state governments while engaged in official duties));~~ ~~((or))~~

(c) Any ~~((student))~~ person who is ~~((attending))~~ involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed; ~~((or))~~

(d) Any ~~((student))~~ person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises; ~~((or))~~

(e) Any ~~((student))~~ person while the ~~((student))~~ person is participating in a firearms or air gun competition approved by the school or school district;

(f) Any person who has been issued a license under RCW 9.41.070, while picking up or dropping off a student;

(g) Any person legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(h) Any person who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(i) Any law enforcement officer of the federal, state, or local government agency.

(4) Except as provided in subsection (3)(b), (c), (e), and (i) of this section, firearms are not permitted in a public or private school building.

(5) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.320 RCW to read as follows:

Each school district and each private school approved under chapter 28A.195 RCW shall report to the superintendent of public instruction by January 31st of each year all known incidents involving the possession of weapons on school premises, on transportation systems, or in areas of facilities while being used

exclusively by public or private schools, in violation of RCW 9.41.280 in the year preceding the report. The superintendent shall compile the data and report it to the house of representatives, the senate, and the governor.

**Sec. 3.** RCW 28A.635.060 and 1989 c 269 s 6 are each amended to read as follows:

(1) Any pupil who shall deface or otherwise injure any school property, shall be liable to suspension and punishment. Any school district whose property has been lost or willfully cut, defaced, or injured, may withhold the grades, diploma, and transcripts of the pupil responsible for the damage or loss until the pupil or the pupil's parent or guardian has paid for the damages, unless the student is transferring to another elementary or secondary educational institution, in which case the student's permanent record shall be released promptly to the receiving school. When the pupil and parent or guardian are unable to pay for the damages, the school district shall provide a program of voluntary work for the pupil in lieu of the payment of monetary damages. Upon completion of voluntary work the grades, diploma, and transcripts of the pupil shall be released. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

(2) Before any penalties are assessed under this section, a school district board of directors shall adopt procedures which insure that pupils' rights to due process are protected.

(3) If the department of social and health services or a child-placing agency licensed by the department has been granted custody of a child, that child's records, if requested by the department or agency, are not to be withheld for nonpayment of school fees or any other reason.

**\*Sec. 4.** RCW 10.31.100 and 1988 c 190 s 1 are each amended to read as follows:

*A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((8))~~ (9) of this section.*

*(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270 shall have the authority to arrest the person.*

*(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:*

*(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or*

*(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.*

*(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:*

*(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;*

*(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;*

*(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;*

*(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;*

*(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;*

*(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.*

*(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.*

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.100 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person. For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(10) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((10))~~ (11) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the police officer acts in good faith and without malice.

\*Sec. 4 was vetoed, see message at end of chapter.

Passed the Senate April 20, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 15, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 4, Engrossed Substitute Senate Bill No. 5307 entitled:

"AN ACT Relating to student safety and discipline"

Section 4 of Engrossed Substitute Senate Bill No. 5307 adds probable cause arrest authority for officers believing an individual illegally possesses or has illegally possessed a firearm or other dangerous weapon on school premises.

Section 4 of Engrossed Substitute Senate Bill No. 5307 is identical to Senate Bill No. 5107 which I have already signed.

For this reason, I have vetoed section 4 of Engrossed Substitute Senate Bill No. 5307.

With the exception of section 4, Engrossed Substitute Senate Bill No. 5307 is approved."

## CHAPTER 348

[Senate Bill 5330]

### SECOND-HAND PROPERTY—EXEMPTION FROM THIRTY-DAY HOLDING PERIOD

Effective Date: 7/25/93

AN ACT Relating to second-hand property; and adding a new section to chapter 18.11 RCW. Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 1.** A new section is added to chapter 18.11 RCW to read as follows:

The department of licensing may exempt, by rule, second-hand property bought or received on consignment or sold at an auction conducted by a licensed auctioneer or auction company from RCW 19.60.050 or 19.60.055.

Passed the Senate April 20, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 349

[Substitute Senate Bill 5357]

### SCHOOL EMPLOYMENT SERVICE CONTRACTS—REQUIRED BENEFITS FOR CONTRACTORS' EMPLOYEES

Effective Date: 7/25/93

AN ACT Relating to employment benefits for employees under school service contracts; and adding a new section to Title 28A RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to Title 28A RCW to read as follows:

(1) When a school district or educational service district enters into a contract for services that had been previously performed by classified school employees, the contract shall contain a specific clause requiring the contractor to provide for persons performing such services under the contract, health benefits that are similar to those provided for school employees who would otherwise perform the work, but in no case are such health benefits required to be greater than the benefits provided for basic health care services under chapter 70.47 RCW.

(2) Decisions to enter into contracts for services by a school district or educational service district may only be made: (a) After the affected district has conducted a feasibility study determining the potential costs and benefits, including the impact on district employees who would otherwise perform the work, that would result from contracting for the services; (b) after the decision to contract for the services has been reviewed and approved by the superintendent of public instruction; and (c) subject to any applicable requirements for collective bargaining. The factors to be considered in the feasibility study shall be developed in consultation with representatives of the affected employees and may include both long-term and short-term effects of the proposal to contract for services.

(3) This section applies only if the contract would be for services that are being performed by classified school employees as of the effective date of this act.

(4) This section does not apply to:

- (a) Temporary, nonongoing, or nonrecurring service contracts; or
- (b) Contracts for services previously performed by employees in director/supervisor, professional, and technical positions.

(5) For the purposes of subsection (4) of this section:

(a) "Director/supervisor position" means a position in which an employee directs staff members and manages a function, a program, or a support service.

(b) "Professional position" means a position for which an employee is required to have a high degree of knowledge and skills acquired through a baccalaureate degree or its equivalent.

(c) "Technical position" means a position for which an employee is required to have a combination of knowledge and skills that can be obtained through approximately two years of posthigh school education, such as from a community or technical college, or by on-the-job training.

Passed the Senate April 21, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 350

[Substitute Senate Bill 5360]

## DOMESTIC VIOLENCE—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to domestic violence; amending RCW 26.50.035 and 10.99.030; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems including child abuse, crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs include the loss of lives as well as millions of dollars each year in the state of Washington for health care, absence from work, and services to children. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies. Without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue.

**Sec. 2.** RCW 26.50.035 and 1985 c 303 s 3 are each amended to read as follows:

(1) By July 1, 1994, the administrator for the courts shall develop and prepare (~~(, in consultation with interested persons, the forms and instructional)~~) instructions and informational brochures required under RCW 26.50.030(~~(3-))~~) (4), standard petition and order for protection forms, and a court staff handbook on domestic violence and the protection order process. The standard petition and order for protection forms must be used after September 1, 1994, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state domestic violence coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining a protection order, a no-contact order as provided by RCW 10.99.040, a restraining order as provided by RCW 26.09.060, and an antiharassment protection order as provided by chapter 10.14 RCW.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a domestic violence program, defined in RCW 70.123.020, serving the county in which the court is located. The community resource list shall include the names and telephone numbers of domestic violence programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrator for the courts shall distribute a master copy of the petition and order forms (~~and instructional brochures to all court clerks~~), instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrator for the courts shall arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into Spanish, Vietnamese, Laotian, Cambodian, and Chinese, and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1995.

Sec. 3. RCW 10.99.030 and 1984 c 263 s 21 are each amended to read as follows:

(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.



(2) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(3)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(4) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a state-wide twenty-four-hour toll-free hotline at 1-800-562-6025. The battered women's shelter and other resources in your area are . . . . (include local information)"

(5) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(6) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(7) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(8) Records kept pursuant to subsections (3) and (7) of this section shall be made identifiable by means of a departmental code for domestic violence.

(9) Commencing January 1, 1994, records of incidents of domestic violence shall be submitted, in accordance with procedures described in this subsection, to the Washington association of sheriffs and police chiefs by all law enforcement agencies. The Washington criminal justice training commission shall amend its contract for collection of state-wide crime data with the Washington association of sheriffs and police chiefs:

(a) To include a table, in the annual report of crime in Washington produced by the Washington association of sheriffs and police chiefs pursuant to the contract, showing the total number of actual offenses and the number and percent of the offenses that are domestic violence incidents for the following crimes: (i) Criminal homicide, with subtotals for murder and nonnegligent homicide and manslaughter by negligence; (ii) forcible rape, with subtotals for rape by force and attempted forcible rape; (iii) robbery, with subtotals for firearm, knife or cutting instrument, or other dangerous weapon, and strongarm robbery; (iv) assault, with subtotals for firearm, knife or cutting instrument, other dangerous weapon, hands, feet, aggravated, and other nonaggravated assaults; (v) burglary, with subtotals for forcible entry, nonforcible unlawful entry, and attempted forcible entry; (vi) larceny theft, except motor vehicle theft; (vii) motor vehicle theft, with subtotals for autos, trucks and buses, and other vehicles; and (viii) arson;

(b) To require that the table shall continue to be prepared and contained in the annual report of crime in Washington until that time as comparable or more detailed information about domestic violence incidents is available through the Washington state incident based reporting system and the information is prepared and contained in the annual report of crime in Washington; and

(c) To require that, in consultation with interested persons, the Washington association of sheriffs and police chiefs prepare and disseminate procedures to all law enforcement agencies in the state as to how the agencies shall code and report domestic violence incidents to the Washington association of sheriffs and police chiefs.

**NEW SECTION. Sec. 4.** If specific funding for section 2 subsection (5) of this act, referencing this act by bill, section and subsection number, is not provided by June 30, 1993, in the omnibus appropriations act, section 2 subsection (5) is null and void.

**Sec. 5.** RCW 7.69.020 and 1985 c 443 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Survivor" or "survivors" of a victim of crime means a spouse, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.

(3) "Victim" means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed.

(4) "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

(5) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(6) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

Sec. 6. RCW 7.69.030 and 1985 c 443 s 3 are each amended to read as follows:

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

~~((2))~~ (3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

~~((3))~~ (4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

~~((4))~~ (5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

~~((5))~~ (6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

~~((6))~~ (7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

~~((7))~~ (8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

~~((8))~~ (9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

~~((9))~~ (10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program present at any prosecutorial or defense interviews with the victim. This subsection applies if practical and if the presence of the crime victim advocate does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

~~((10))~~ (12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

~~((11))~~ (13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

~~((12))~~ (14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

~~((13))~~ (15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment.

**Sec. 7.** RCW 7.69A.020 and 1992 c 188 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Child" means any living child under the age of eighteen years.

(3) "Victim" means a living person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(5) "Family member" means child, parent, or legal guardian.

(6) "Advocate" means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.

(7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a child victim, including pretrial hearings, trial, sentencing, or appellate proceedings.

(8) "Identifying information" means the child's name, address, location, and photograph, and in cases in which the child is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

(9) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

**Sec. 8.** RCW 7.69A.030 and 1985 c 394 s 3 are each amended to read as follows:

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement

agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. The enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

(2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.

(3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

~~((3))~~ (4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

~~((4))~~ (5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

~~((5))~~ (6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

~~((6))~~ (7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

~~((7))~~ (8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

~~((8))~~ (9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

~~((9))~~ (10) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim.

(11) With respect to child victims of violent or sex crimes or child abuse, to receive either directly or through the child's parent or guardian if appropriate,

at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

**NEW SECTION. Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 20, 1993.

Passed the House April 14, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 351

[Substitute Senate Bill 5380]

### STATE PATROL COLLECTIVE BARGAINING—MEDIATION AND ARBITRATION

Effective Date: 7/25/93

AN ACT Relating to collective bargaining for Washington state patrol officers; and amending RCW 41.56.475.

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

**Sec. 1.** RCW 41.56.475 and 1988 c 110 s 2 are each amended to read as follows:

In addition to the classes of employees listed in RCW 41.56.030(7), the provisions of RCW 41.56.430(~~(, 41.56.440, and)~~) through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) The mediator shall not consider wages and wage-related matters.

(2) (~~The services of the mediator, including any per diem expenses, shall be provided by the commission without cost to the parties. Nothing in this section shall be construed to prohibit the public employer and a bargaining representative from agreeing to substitute at their own expense some other mediator or mediation procedure.~~)

(3) ~~If the public employer and a bargaining representative are unable to reach an agreement in mediation, either party, by written notice to the other party and to the commission, may request that the matters in dispute be submitted to a fact finder for recommendations. If the executive director, upon the recommendation of the mediator, finds that the parties remain at an impasse after a reasonable period of negotiations, the executive director shall initiate fact-finding proceedings.~~

~~(a) The executive director shall provide the parties with a list of five persons qualified to serve as the neutral fact finder. The parties shall without delay attempt to agree upon a fact finder from the list provided by the commission or to agree upon some other person as a fact finder. Upon the failure of the parties to agree upon a fact finder within seven days after the issuance of the list, the commission shall, upon the request of either party, appoint a fact finder. The commission shall not appoint as fact finder the same person who acted as mediator in the dispute.~~

~~(b) The fact finder shall promptly establish a date, time, and place to meet with the representatives of the parties and shall provide reasonable notice of the meeting to the parties to the dispute. The requirements of chapter 34.05 RCW shall not apply to fact-finding proceedings. The fact finder shall make inquiries and investigations, hold hearings, and take such other steps as he or she deems appropriate. The fact finder may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.~~

~~(c) The fact finder shall, within thirty days following the conclusion of the hearing, make written findings of fact and written recommendations to the parties as to how their dispute should be resolved. A copy shall be delivered or mailed to each of the parties to the dispute. A copy shall be filed with the commission. The findings and recommendations of the fact finder are advisory only.~~

~~(d) The findings and recommendations of the fact finder shall be held in confidence among the fact finder, the public employer, the bargaining representative, and the commission for seven calendar days following their issuance, to permit the public employer and the bargaining representative to study the recommendations. No later than seven calendar days following the issuance of the recommendations of the fact finder, each party shall notify the commission and the other party whether it accepts or rejects, in whole or in part, the recommendations of the fact finder. If the parties remain in disagreement following the expiration of the seven-day period, the findings and recommendations of the fact finder may be made public.~~

~~(e) The fees and expenses of the fact finder shall be paid by the parties to the dispute, in equal amounts. All other costs of the proceeding shall be paid by the party incurring those costs. Nothing in this section prohibits an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, some other impasse procedure or from agreeing to some other allocation of the costs of fact-finding between them.)~~ In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like



personnel of like employers of similar size on the west coast of the United States;

(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of hours and conditions of employment.

Passed the Senate April 20, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 352

[Substitute Senate Bill 5402]

### WASHINGTON STATE INSTITUTE FOR SCIENCE, TECHNOLOGY, AND SOCIETY—FEASIBILITY STUDY

Effective Date: 7/25/93

AN ACT Relating to literacy in mathematics, science, and technology; and creating new sections.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds:

(a) Mathematics, science, and technology subtly but profoundly impact the lives of Washington state residents. In the coming years mathematics, science, and technology will become increasingly important in addressing societal concerns about health, environmental protection, conservation, energy supply, and industrial growth;

(b) There is consensus that the most likely leading industries in the twenty-first century will be in microelectronics, biotechnology, new materials industries, civilian aviation, telecommunications, robotics, and computer-related technologies. This means that literacy in mathematics, science, and technology will become increasingly important to the economic future of Washington state; and

(c) National education goal number four establishes that by the year 2000, United States students will be first in the world in science and mathematics achievement.

(2) The legislature recognizes that change is not optional and believes that only if literacy in mathematics, science, and technology is expanded to include all segments of the population can Washington state build upon existing public and private sector resources to take full advantage of the projected leading industries for the twenty-first century and achieve national education goal number four.

(3) It is the intent of the legislature to develop a long-range, comprehensive mathematics, science, and technology literacy program that reaches into all segments of society and supports a vision in which Washington state is a place where all citizens demonstrate, value, and support literacy in mathematics, science, and technology.

**NEW SECTION.** Sec. 2. Before July 1, 1994, the higher education coordinating board may solicit, receive, and expend any private gifts or grants to conduct the study in section 3 of this act. Funds shall be expended in accordance with the conditions contingent in the gift or grant of those funds.

**NEW SECTION.** Sec. 3. If sufficient funding from public or private sources is made available specifically for the purposes of this act by July 1, 1994, the higher education coordinating board shall contract with an appropriate person or entity to conduct a study on the feasibility and desirability of creating a Washington state institute for science, technology, and society. The study shall be completed by July 1, 1995.

**NEW SECTION.** Sec. 4. The study in section 3 of this act shall include but not be limited to:

- (1) Identification of an appropriate role and mission for the institute;
- (2) Options for a governmental structure and location of an institute; and
- (3) Options for funding.

**NEW SECTION.** Sec. 5. For the purpose of the study in section 3 of this act, the purpose of a Washington state institute for science, technology, and society is as follows:

- (1) Implementation of a long-range comprehensive mathematics, science, and technology literacy program;
- (2) Development, identification, and dissemination of math, science, and technology curriculum options, textbooks, and course materials;
- (3) Provide institutes, workshops, and in-service training to teachers, college and university professors, and school administrators;
- (4) Coordinate the dissemination of information to groups and agencies, including a clearinghouse of speakers on mathematics, science, and technology literacy; and
- (5) Provide technical expertise to common schools and institutions of higher education.

**NEW SECTION.** Sec. 6. Based on the study conducted under section 3 of this act, the higher education coordinating board shall report findings, conclusions, and recommendations to the legislature and the governor no later than January 1, 1996.

Passed the Senate April 17, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 353

[Substitute Senate Bill 5407]

### AGRICULTURAL BURNING PERMITS—CONVENIENT ISSUANCE AND OVERSIGHT METHODS REQUIRED

Effective Date: 7/25/93

AN ACT Relating to agricultural burning permits; and amending RCW 70.94.650 and 70.94.654.

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

**Sec. 1.** RCW 70.94.650 and 1991 c 199 s 408 are each amended to read as follows:

(1) Any person who proposes to set fires in the course of

(a) weed abatement,

(b) instruction in methods of fire fighting (~~(((except forest fires)))~~), except forest fire training, or

(c) agricultural activities~~((;))~~ shall~~((; prior to carrying out the same,))~~ obtain a permit from an air pollution control authority ~~((or))~~ the department of ecology, ~~((as appropriate. Each such authority and the department of ecology shall, by rule or ordinance, establish a permit system to carry out the provisions of this section except as provided in RCW 70.94.660))~~ or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of state-wide applicability ~~((for ruling on such permits))~~ shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits ~~((so issued))~~ shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed. The

department of ecology and local air authorities shall provide convenient methods for issuance and oversight of agricultural burning permits. The department and local air authorities shall, through agreement, work with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(2) (~~Except as provided in RCW 70.94.780~~) Permit fees shall be assessed for (~~outdoor~~) burning under this section and shall be collected by the department of ecology (~~or~~), the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental (~~affects [effects]~~) effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on

priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

**Sec. 2.** RCW 70.94.654 and 1991 c 199 s 409 are each amended to read as follows:

Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution control authority, shall find that any fire protection agency, county, or conservation district (~~(which is outside the jurisdictional boundaries of an activated air pollution control authority)~~) is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650 and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon ~~((its))~~ finding that the fire protection agency, county, or conservation district is not effectively administering the permit program.

Passed the Senate April 24, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 354

[Substitute Senate Bill 5443]

### LIVESTOCK IDENTIFICATION, LIVESTOCK MARKETS, AND FEED LOTS—REGULATION REVISED

Effective Date: 7/25/93

AN ACT Relating to livestock identification, public livestock markets, and certified feed lots; amending RCW 16.65.030, 16.65.090, 16.58.050, 16.58.130, 16.57.080, 16.57.090, 16.57.140, 16.57.220, 16.57.400, and 16.57.410; adding a new section to chapter 16.57 RCW; and repealing RCW 16.57.390.

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

**Sec. 1.** RCW 16.65.030 and 1991 c 17 s 1 are each amended to read as follows:

(1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(a) A legal description of the property upon which the public livestock market shall be located.

(b) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(c) A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.

(d) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(e) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales.

(f) Projected source and quantity of livestock, by county, anticipated to be handled.

(g) Projected income and expense statements for the first year's operation.

(h) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(i) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34.05 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and

(b) The present market services elsewhere available to the trade area proposed to be served.

(3) Such application shall be accompanied by a license fee based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a fee of no less than one hundred (~~dollar-fee~~) dollars or more than one hundred fifty dollars;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a fee of no less than two hundred (~~dollar-fee~~) dollars or more than three hundred fifty dollars; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a fee of no less than three hundred (~~dollar-fee~~) dollars or more than four hundred fifty dollars.

The fees for public livestock market licensees shall be set by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act.

(4) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate license fee.

(5) Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued.

**Sec. 2.** RCW 16.65.090 and 1983 c 298 s 8 are each amended to read as follows:

The director shall provide for brand inspection. When such brand inspection is required the licensee shall collect from the consignor and pay to the department, as provided by law, a fee for brand inspection for each animal consigned to the public livestock market or special open consignment horse sale(~~(- PROVIDED, That if in any one sale day the total fees collected for brand inspection do not exceed sixty dollars, then such licensee shall pay sixty dollars for such brand inspection or as much thereof as the director may prescribe)).~~ The director shall set by rule, adopted after a hearing under chapter 34.05 RCW and in conformance with section 10 of this act, a minimum daily inspection fee that shall be paid to the department by the licensee. Such a fee shall be not less than sixty dollars and not more than ninety dollars.

**Sec. 3.** RCW 16.58.050 and 1979 c 81 s 2 are each amended to read as follows:

The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of no less than five hundred dollars or no more than seven hundred fifty dollars. The actual license fee for a certified feed lot license shall be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act. Upon approval of the application by the director and compliance with the provisions of this chapter and rules (~~and regulations~~) adopted hereunder, the applicant shall be issued a license or a renewal thereof.

**Sec. 4.** RCW 16.58.130 and 1991 c 109 s 14 are each amended to read as follows:

Each licensee shall pay to the director a fee of no less than ten cents but no more than fifteen cents for each head of cattle handled through the licensee's feed lot. The fee shall be set by the director by rule after a hearing under chapter 34.05 RCW and in conformance with section 10 of this act. Payment of such fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments.

**Sec. 5.** RCW 16.57.080 and 1991 c 110 s 1 are each amended to read as follows:

The director shall establish by rule a schedule for the renewal of registered brands. The fee for renewal of the brands shall be no less than twenty-five dollars for each two-year period of brand ownership, except that the director

may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis and may by rule increase the registration and renewal fee for brands by no more than fifty percent subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act. At least one hundred twenty days before the expiration of a registered brand, the director shall notify by letter the owner of record of the brand that on the payment of the requisite application fee and application of renewal the director shall issue the proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent registration period. The failure of the registered owner to pay the renewal fee by the date required by rule shall cause such owner's brand to revert to the department. The director may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of ~~((twenty-five dollars and an additional fee of ten dollars))~~ the registration fee and a late filing fee to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act, for renewal subsequent to the regular renewal period. The director may at ~~((his))~~ the director's discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant.

**Sec. 6.** RCW 16.57.090 and 1974 ex.s. c 64 s 3 are each amended to read as follows:

A brand is the personal property of the owner of record. Any instrument affecting the title of such brand shall be acknowledged in the presence of the recorded owner and a notary public. The director shall record such instrument upon presentation and payment of a ~~((ten dollar))~~ recording fee not to exceed fifteen dollars to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act. Such recording shall be constructive notice to all the world of the existence and conditions affecting the title to such brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of ~~((his))~~ the director's agents to properly record such instrument.

**Sec. 7.** RCW 16.57.140 and 1974 ex.s. c 64 s 4 are each amended to read as follows:

The owner of a brand of record may procure from the director a certified copy of the record of ~~((his))~~ the owner's brand upon payment of ~~((five dollars))~~ a fee not to exceed seven dollars and fifty cents to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act.

**Sec. 8.** RCW 16.57.220 and 1981 c 296 s 17 are each amended to read as follows:

The director shall cause a charge to be made for all brand inspection of cattle and horses required under this chapter and rules ~~((and regulations))~~ adopted hereunder. Such charges shall be paid to the department by the owner or person



in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and shall be paid upon billing by the department and if not shall constitute a prior lien on the cattle or cattle hides or horses or horse hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspection ~~((shall))~~ may establish schedules by days and hours when a brand inspector will be on duty to perform brand inspection at established inspection points. The fees for brand inspection ~~((performed at inspection points according to schedules established by the director))~~ shall be not less than ~~((thirty cents nor more than))~~ fifty cents nor more than seventy-five cents per head for cattle and not less than two dollars nor more than three dollars per head for horses as prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with section 10 of this act. Fees for brand inspection of cattle and horses performed by the director at points other than those designated by the director or not in accord with the schedules established by ~~((him))~~ the director shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.05 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended.

**Sec. 9.** RCW 16.57.400 and 1981 c 296 s 23 are each amended to read as follows:

The director may provide by rules and regulations adopted pursuant to chapter 34.05 RCW for the issuance of individual horse and cattle identification certificates or other means of horse and cattle identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse and cattle owner in whose name it is issued.

Horses and cattle identified pursuant to the provisions of this section and the rules and regulations adopted hereunder shall not be subject to brand inspection except when sold at points provided for in RCW 16.57.380. The director shall charge a fee for the certificates or other means of identification authorized pursuant to this section and no identification shall be issued until the director has received the fee. The schedule of fees shall be established in accordance with the provisions of chapter 34.05 RCW.

**NEW SECTION.** **Sec. 10.** A new section is added to chapter 16.57 RCW to read as follows:

(1) The director shall establish a livestock identification advisory board. The board shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat

processors. In making appointments, the director shall solicit nominations from organizations representing these groups state-wide.

(2) The purpose of the board is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding brand inspection fees and related licensing fees. The director shall consult the board before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter or a proposed rule setting a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090 and the rule has not received the approval of the advisory board, the director shall file with the board a written statement setting forth the director's reasons for proposing the rule without the board's approval.

(3) The members of the advisory board serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the board to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060.

**Sec. 11.** RCW 16.57.410 and 1989 c 286 s 25 are each amended to read as follows:

(1) No person may act as a registering agency without a permit issued by the department. The director may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for such permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.220 and 16.57.380 (~~and 16.57.390~~). Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be sold as provided under RCW 16.57.290 through 16.57.330.

(4) The director shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter 34.05 RCW.

**NEW SECTION. Sec. 12.** RCW 16.57.390 and 1974 ex.s. c 38 s 2 are each repealed.

Passed the Senate April 19, 1993.

Passed the House April 6, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 355

[Engrossed Substitute Senate Bill 5452]

### INCARCERATION COSTS—PAYMENT BY MISDEMEANANT

Effective Date: 7/25/93

AN ACT Relating to payment for costs of incarceration; and adding a new section to chapter 10.64 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 10.64 RCW to read as follows:

Once a defendant has been convicted of a misdemeanor or gross misdemeanor, unless the defendant has been found by the court, pursuant to RCW 10.101.020, to be indigent, the court may require the defendant to pay for the cost of incarceration at a rate of up to fifty dollars per day of incarceration. Payment of other court ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail shall be remitted to the county or city for criminal justice purposes.

Passed the Senate April 17, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 356

[Substitute Senate Bill 5471]

### NONPROFIT CORPORATIONS—REVISIONS

Effective Date: 7/1/93

AN ACT Relating to nonprofit corporations; amending RCW 24.03.046, 24.03.047, 24.03.055, 24.03.240, 24.03.302, 24.03.345, 24.03.370, 24.03.386, 24.03.388, 24.03.395, 24.03.400, 24.03.410, 24.06.046, 24.06.047, 24.06.050, 24.06.055, 24.06.275, 24.06.290, 24.06.380, 24.06.415, 24.06.440, 24.06.445, and 24.06.455; adding a new section to chapter 24.06 RCW; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 24.03.046 and 1982 c 35 s 77 are each amended to read as follows:

The exclusive right to the use of a corporate name may be reserved by:

- (1) Any person intending to organize a corporation under this title.
- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by or on behalf of the applicant. If the secretary of state finds that the name is available for corporate use, the secretary of state shall reserve the same for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing (~~and one renewal for a like period~~).

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

**Sec. 2.** RCW 24.03.047 and 1987 c 55 s 40 are each amended to read as follows:

Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, the name of any limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

- (1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or ~~((territory))~~ country under the laws of which it is incorporated, the date of its incorporation, ~~((a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged,))~~ and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or ~~((territory))~~ country or by such other official as may have custody of the records pertaining to corporations, and

- (2) Paying to the secretary of state the applicable registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed.

**Sec. 3.** RCW 24.03.055 and 1986 c 240 s 10 are each amended to read as follows:

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in the form prescribed by the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) If the ~~((address of its))~~ current registered office is to be changed, the street address to which the registered office is to be changed.

(3) If ~~((its))~~ the current registered agent is to be changed, the name of ~~((its successor))~~ the new registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~((5) That such change was authorized by resolution duly adopted by its board of directors.)~~

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall endorse thereon the word "Filed," and the month, day, and year of the filing thereof, and file the statement. The change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective upon filing unless a later date is specified.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes the agent's business address to another place within the state, the agent may change such address and the address of the registered office of any corporation of which the agent is a registered agent, by filing a statement as required by this section except that it need be signed only by the registered agent, it need not be responsive to subsection (3) ~~((or (5)))~~ of this section, and it must recite that a copy of the statement has been mailed to the secretary of the corporation.

**Sec. 4.** RCW 24.03.240 and 1982 c 35 s 93 are each amended to read as follows:

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles

of dissolution shall be executed in duplicate by the corporation by an officer of the corporation and shall set forth:

- (1) The name of the corporation.
- (2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
- (3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.
- (4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
- (5) ~~((If a copy of any revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the articles of dissolution))~~ A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW.
- (6) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.
- (7) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

**Sec. 5.** RCW 24.03.302 and 1987 c 117 s 3 are each amended to read as follows:

A corporation shall be administratively dissolved by the secretary of state upon the conditions prescribed in this section when the corporation:

- (1) Has failed to file or complete its annual report within the time required by law; or
- (2) Has failed for thirty days to appoint or maintain a registered agent in this state; or
- (3) Has failed for thirty days, after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change.

A corporation shall not be dissolved under this section unless the secretary of state has given the corporation not less than ~~((forty-five))~~ sixty days' notice of its delinquency or omission, by first class mail, postage prepaid, addressed to the registered office, or, if there is no registered office, to the last known address of any officer or director as shown by the records of the secretary of state, and unless the corporation has failed to correct the omission or delinquency before expiration of the ~~((forty-five))~~ sixty-day period.

When a corporation has given cause for dissolution under this section, and has failed to correct the delinquency or omission as provided in this section, the secretary of the state shall dissolve the corporation by issuing a certificate of administrative dissolution containing a statement that the corporation has been dissolved and the date and reason for which it was dissolved. The original certificate of administrative dissolution shall be filed in the records of the secretary of state, and a copy of the certificate shall forthwith be mailed to the corporation at its registered office or, if there is no registered office, to the last known address of the corporation or any officer, director, or incorporator of the corporation, as shown by the records of the secretary of state. Upon the filing of the certificate of administrative dissolution, the existence of the corporation shall cease, except as otherwise provided in this chapter, and its name shall be available to and may be adopted by another corporation after the dissolution.

Any notice provided by the secretary of state under this section shall be designed to clearly identify and warn the recipient of the contents thereof. A delinquency notice shall provide a succinct and readable description of the delinquency or omission, the date on which dissolution will occur, and the action necessary to cure the delinquency or omission prior to dissolution.

A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its administrative dissolution if it ~~((shall))~~ completes and files ~~((all the))~~ a current annual report~~((s which would have been required for the years of the period of administrative dissolution including those))~~ for the reinstatement year or if it ~~((shall))~~ appoints or maintains a registered agent, or if it ~~((shall))~~ files with the secretary of state a required statement of change of registered agent or registered office and in addition, if it ~~((shall))~~ pays a reinstatement fee of twenty-five dollars plus ~~((any other fees that may be due and owing the secretary of state))~~ the full amount of all annual fees that would have been assessed for the years of administrative dissolution had the corporation been in active status, including the reinstatement year. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the dissolved corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. When a corporation has been dissolved by operation of this section, remedies available to or against it shall survive in the manner provided in RCW 24.03.300 and the directors of the corporation shall hold the title to the property of the corporation as trustees for the benefit of its creditors and members.

**Sec. 6.** RCW 24.03.345 and 1986 c 240 s 47 are each amended to read as follows:

A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in a form approved by the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) If the ~~((address of its))~~ current registered office is to be changed, the street address to which the registered office is to be changed.

(3) If ~~((its))~~ the current registered agent is to be changed, the name of ~~((its successor))~~ the new registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~((5) That such change was authorized by resolution duly adopted by its board of directors.))~~

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall endorse thereon the word "Filed," and the month, day, and year of the filing thereof, and file the statement. The change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective upon filing unless a later date is specified.

Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the secretary of the foreign corporation at its principal office as shown by its most recent annual report. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes his business address to another place within the state, the registered agent may change such address and the address of the registered office of any corporation of which the registered agent is a registered agent by filing a statement as required by this section, except that it need be signed only by the registered agent, it need not be responsive to subsection (3) ~~((or (5)))~~ of this section, and it must recite that a copy of the statement has been mailed to the corporation.

**Sec. 7.** RCW 24.03.370 and 1982 c 35 s 104 are each amended to read as follows:

A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this state.

(3) That the corporation surrenders its authority to conduct affairs in this state.



(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(5) ~~(If a copy of a revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the application for withdrawal)~~ A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW.

(6) A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on the secretary of state.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

**Sec. 8.** RCW 24.03.386 and 1987 c 117 s 1 are each amended to read as follows:

(1) A corporation revoked under RCW 24.03.380 may apply to the secretary of state for reinstatement within ~~((five))~~ three years after the effective date of revocation. An application filed within such ~~((five-))~~ three-year period may be amended or supplemented and any such amendment or supplement shall be effective as of the date of original filing. The application filed under this section shall be filed under and by authority of an officer of the corporation.

(2) The application shall:

(a) State the name of the corporation and, if applicable, the name the corporation had elected to use in this state at the time of revocation, and the effective date of its revocation;

(b) Provide an explanation to show that the grounds for revocation either did not exist or have been eliminated;

(c) State the name of the corporation at the time of reinstatement and, if applicable, the name the corporation elects to use in this state at the time of reinstatement which may be reserved under RCW 24.03.046;

(d) Appoint a registered agent and state the registered office address under RCW 24.03.340; and

(e) Be accompanied by payment of applicable fees and penalties.

(3) If the secretary of state determines that the application conforms to law, and that all applicable fees have been paid, the secretary of state shall cancel the certificate of revocation, prepare and file a certificate of reinstatement, and mail a copy of the certificate of reinstatement to the corporation.

(4) Reinstatement under this section relates back to and takes effect as of the date of revocation. The corporate authority shall be deemed to have continued without interruption from that date.

(5) In the event the application for reinstatement states a corporate name which the secretary of state finds to be contrary to the requirements of RCW 24.03.046, the application, amended application, or supplemental application shall be amended to adopt another corporate name which is in compliance with RCW 24.03.046. In the event the reinstatement application so adopts a new corporate name for use in Washington, the application for authority shall be deemed to have been amended to change the corporation's name to the name so adopted for use in Washington, effective as of the effective date of the certificate of reinstatement.

**Sec. 9.** RCW 24.03.388 and 1991 c 223 s 3 are each amended to read as follows:

(1) An application processing fee as provided in RCW 24.03.405 shall be charged for an application for reinstatement under RCW 24.03.386.

(2) An application processing fee as provided in RCW 24.03.405 shall be charged for each amendment or supplement to an application for reinstatement.

(3) The corporation seeking reinstatement shall file ~~((att))~~ a current annual report((s)) and pay the full amount of all annual corporation fees which would have been assessed for the years of the period of administrative revocation, had the corporation been in active status, including the reinstatement year.

**Sec. 10.** RCW 24.03.395 and 1989 c 291 s 2 are each amended to read as follows:

Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual report in the form prescribed by the secretary of state ~~((setting))~~. The secretary may by rule provide that a biennial filing meets this requirement. The report shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office;

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(4) The names and respective addresses of the directors and officers of the corporation; and

~~(5) ((An affirmative indication whether or not any change has been made in the corporation's purpose and if so, the nature and reason for the change along with accompanying documentation;~~

~~(6) Whether the corporation has filed an internal revenue service form 990 with the internal revenue service, which if filed, shall be made available upon request to the secretary of state's office;~~

~~(7) The gross revenue and any unrelated business income as required to be reported under federal law; and~~

~~(8)) The corporation's unified business identifier number.~~

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may provide that correction or updating of information appearing on previous annual or biennial filings is sufficient to constitute the current ~~((annual))~~ filing.

**Sec. 11.** RCW 24.03.400 and 1986 c 240 s 54 are each amended to read as follows:

Not less than thirty days prior to a corporation's renewal date, or by December 1 of each year for a nonstaggered renewal, the secretary of state shall mail to each domestic and foreign corporation, by first class mail addressed to its registered office, a notice that its annual or biennial report must be filed as required by this chapter, and stating that if it fails to file its annual or biennial report it shall be dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligation to file the annual or biennial reports required by this chapter.

Such ~~((annual))~~ report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, or on an annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

If the secretary of state finds that such report substantially conforms to the requirements of this chapter, the secretary of state shall file the same.

**\*Sec. 12.** RCW 24.03.410 and 1982 c 35 s 111 are each amended to read as follows:

The secretary of state shall ~~((charge and collect))~~ establish by rule, fees for the following:

*(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation ~~((, five dollars for the certificate, plus twenty cents for each page copied.))~~;*

*(2) For furnishing a certificate, under seal, attesting to the status of a corporation; or any other certificate ~~((, five dollars.))~~;*

*(3) For furnishing copies of any document, instrument, or paper relating to a corporation ~~((, one dollar for the first page and twenty cents for each page copied thereafter.))~~; and*

*(4) At the time of any service of process on ~~((him))~~ the secretary of state as registered agent of a corporation ~~((, twenty-five dollars, which)).~~ This*

*amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.*

\*Sec. 12 was vetoed, see message at end of chapter.

**Sec. 13.** RCW 24.06.046 and 1982 c 35 s 122 are each amended to read as follows:

The exclusive right to the use of a corporate name may be reserved by:

- (1) Any person intending to organize a corporation under this title.
- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.
- (4) Any foreign corporation authorized to transact business in this state and intending to change its name.
- (5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by or on behalf of the applicant. If the secretary of state finds that the name is available for corporate use, the secretary of state shall reserve the same for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing (~~and one renewal for a like period~~).

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

**Sec. 14.** RCW 24.06.047 and 1987 c 55 s 42 are each amended to read as follows:

Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, the name of any domestic or foreign limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

- (1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or (~~territory~~) country under the laws of which it is incorporated, and the date of its incorporation, (~~a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged,~~) and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or (~~territory~~) country wherein it is organized, executed by

the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state ~~((a registration fee in the amount of one dollar for each month, or fraction thereof, between the date of filing the application and December thirty-first of the calendar year in which the application is filed))~~ the applicable annual registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed.

**Sec. 15.** RCW 24.06.050 and 1982 c 35 s 125 are each amended to read as follows:

Each domestic corporation and foreign corporation authorized to do business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation existing under any act of this state or a foreign corporation authorized to transact business or conduct affairs in this state under any act of this state having an office identical with such registered office. The resident agent and registered office shall be designated by duly adopted resolution of the board of directors; and a statement of such designation, executed by an officer of the corporation, ~~((together with a copy of the board of directors' designating resolution;))~~ shall be filed with the secretary of state. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to transact business in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section.

**Sec. 16.** RCW 24.06.055 and 1982 c 35 s 126 are each amended to read as follows:

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation.

(2) If the address of its registered office is to be changed, the address to which the registered office is to be changed, including street and number.

(3) If ~~((ts))~~ the current registered agent is to be changed, the name of its successor registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~((5) That such change was authorized by resolution duly adopted by its board of directors.))~~

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered office to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall file such statement, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

**Sec. 17.** RCW 24.06.275 and 1982 c 35 s 138 are each amended to read as follows:

If voluntary dissolution proceedings have not been revoked, then after all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation, by an officer of the corporation; and such statement shall set forth:

(1) The name of the corporation.

(2) The date of the meeting of members or shareholders at which the resolution to dissolve was adopted, certifying that:

(a) A quorum was present at such meeting;

(b) Such resolution received at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy were entitled to cast or was adopted by a consent in writing signed by all members and shareholders;

(c) All debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(d) All the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter;

(e) There are no suits pending against the corporation in any court or, if any suits are pending against it, that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered; and

(f) ~~((If a copy of any revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the articles of dissolution))~~ A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW.

**Sec. 18.** RCW 24.06.290 and 1982 c 35 s 141 are each amended to read as follows:

Failure of the corporation to file its annual report within the time required shall not derogate from the rights of its creditors, or prevent the corporation from being sued and from defending lawsuits, nor shall it release the corporation from any of the duties or liabilities of a corporation under law.

A corporation shall be dissolved by the secretary of state upon the conditions prescribed in this section when the corporation:

(1) Has failed to file or complete its annual report within the time required by law;

(2) Has failed for thirty days to appoint or maintain a registered agent in this state; or

(3) Has failed for thirty days, after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change.

A corporation shall not be dissolved under this section unless the secretary of state has given the corporation not less than ~~((forty-five))~~ sixty days' notice of its delinquency or omission, by first class mail, postage prepaid, addressed to the registered office, or, if there is no registered office, to the last known address of any officer or director as shown by the records of the secretary of state, and unless the corporation has failed to correct the omission or delinquency before expiration of the ~~((forty-five))~~ sixty-day period.

When a corporation has given cause for dissolution under this section, and has failed to correct the delinquency or omission as provided in this section, the secretary of state shall dissolve the corporation by issuing a certificate of involuntary dissolution containing a statement that the corporation has been dissolved and the date and reason for which it was dissolved. The original certificate of involuntary dissolution shall be filed in the records of the secretary of state, and a copy of the certificate shall forthwith be mailed to the corporation at its registered office or, if there is no registered office, to the last known address of the corporation or any officer, director, or incorporator of the corporation, as shown by the records of the secretary of state. Upon the filing of the certificate of involuntary dissolution, the existence of the corporation shall

cease, except as otherwise provided in this chapter, and its name shall be available to and may be adopted by another corporation after the dissolution.

A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its dissolution if it shall file or complete ~~((it\*))~~ a current annual report, appoint and maintain a registered agent, or file a required statement of change of registered agent or registered office and in addition pay ~~((it\*))~~ the reinstatement fee of twenty-five dollars plus any other fees that may be due or owing the secretary of state including the full amount of all annual fees that would have been assessed for the years of administrative dissolution had the corporation been in active status, including the reinstatement year. If during the period of dissolution another person or corporation has reserved or adopted a corporate name which is identical or deceptively similar to the dissolved corporation's name, the dissolved corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles accordingly. When a corporation has been dissolved by operation of this section, remedies available to or against it shall survive in the manner provided by RCW 24.06.335 and thereafter the directors of the corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders.

**Sec. 19.** RCW 24.06.380 and 1982 c 35 s 146 are each amended to read as follows:

A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in a form approved by the secretary of state a statement setting forth:

- (1) The name of the corporation.
- (2) If the address of ~~((it\*))~~ the current registered office is to be changed, such new address.
- (3) If ~~((it\*))~~ the current registered agent is to be changed, the name of ~~((it\*))~~ the new registered agent.
- (4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~((5) That such change was authorized by resolution duly adopted by its board of directors.))~~

Such statement shall be executed by the corporation, by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, he or she shall file such statement in his or her office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

If a registered agent changes his or her business address to another place within the state, the registered agent may change such address and the address of the registered office of any corporation of which the registered agent is



registered agent by filing a statement as required by this section, except that it need be signed only by the registered agent, it need not be responsive to subsection (3) of this section, and it shall recite that a copy of the statement has been mailed to the corporation.

**Sec. 20.** RCW 24.06.415 and 1982 c 35 s 148 are each amended to read as follows:

A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under whose laws it is incorporated.

(2) A declaration that the corporation is not conducting affairs in this state.

(3) A surrender of its authority to conduct affairs in this state.

(4) A notice that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding, based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state, may thereafter be made upon such corporation by service thereof on the secretary of state.

~~(5) (If a copy of any revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the application for withdrawal)~~ A copy of the revenue clearance certificate issued pursuant to chapter 82.32 RCW.

(6) A post office address to which the secretary of state may mail a copy of any process that may be served on the secretary of state as agent for the corporation.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation, by one of the officers of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

**NEW SECTION.** **Sec. 21.** A new section is added to chapter 24.06 RCW to read as follows:

(1) A corporation revoked under RCW 24.06.425 may apply to the secretary of state for reinstatement within three years after the effective date of revocation. An application filed within such three-year period may be amended or supplemented and any such amendment or supplement shall be effective as of the date of original filing. The application filed under this section shall be filed under and by authority of an officer of the corporation.

(2) The application shall:

(a) State the name of the corporation and, if applicable, the name the corporation had elected to use in this state at the time of revocation, and the effective date of its revocation;

(b) Provide an explanation to show that the grounds for revocation either did not exist or have been eliminated;

(c) State the name of the corporation at the time of reinstatement and, if applicable, the name the corporation elects to use in this state at the time of reinstatement which may be reserved under RCW 24.06.046;

(d) Appoint a registered agent and state the registered office address under RCW 24.06.375; and

(e) Be accompanied by payment of applicable fees and penalties.

(3) If the secretary of state determines that the application conforms to law, and that all applicable fees have been paid, the secretary of state shall cancel the certificate of revocation, prepare and file a certificate of reinstatement, and mail a copy of the certificate of reinstatement to the corporation.

(4) Reinstatement under this section relates back to and takes effect as of the date of revocation. The corporate authority shall be deemed to have continued without interruption from that date.

(5) In the event the application for reinstatement states a corporate name that the secretary of state finds to be contrary to the requirements of RCW 24.06.046, the application, amended application, or supplemental application shall be amended to adopt another corporate name that is in compliance with RCW 24.06.046. In the event the reinstatement application so adopts a new corporate name for use in Washington, the application for authority shall be deemed to have been amended to change the corporation's name to the name so adopted for use in Washington, effective as of the effective date of the certificate of reinstatement.

**Sec. 22.** RCW 24.06.440 and 1982 c 35 s 152 are each amended to read as follows:

Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual or biennial report, established by the secretary of state by rule, in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation and the state or country under whose laws it is incorporated.

(2) The address of the registered office of the corporation in this state, including street and number, the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under whose laws it is incorporated.

(3) A brief statement of the character of the affairs in which the corporation is engaged, or, in the case of a foreign corporation, engaged in this state.

(4) The names and respective addresses of the directors and officers of the corporation.

(5) The corporation's unified business identifier number.

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may by rule adopted under chapter 34.05 RCW provide that correction or updating of information appearing on previous annual or biennial filings is sufficient to constitute the current (~~(annual)~~) filing.

**Sec. 23.** RCW 24.06.445 and 1982 c 35 s 153 are each amended to read as follows:

An annual or biennial report of each domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year or on such annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates. Proof to the satisfaction of the secretary of state that the report was deposited in the United States mails, in a sealed envelope, properly addressed to the secretary of state, with postage prepaid thereon, prior to the corporation's annual or biennial renewal date, shall be deemed compliance with this requirement.

If the secretary of state finds that a report substantially conforms to the requirements of this chapter, the secretary of state shall file the same.

Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligation to file the annual reports required by this chapter.

*\*Sec. 24. RCW 24.06.455 and 1982 c 35 s 155 are each amended to read as follows:*

*The secretary of state shall (~~(charge and collect in advance)~~) establish by rule, fees for the following:*

*(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation (~~(, five dollars for the certificate, plus twenty cents for each page copied.))~~;*

*(2) For furnishing a certificate, under seal, attesting to the status of a corporation; or any other certificate (~~(, five dollars.))~~;*

*(3) For furnishing copies of any document, instrument, or paper relating to a corporation (~~(, one dollar; or the first page and twenty cents for each page copied thereafter.))~~;* and

*(4) At the time of any service of process on (~~(him))~~) the secretary of state as resident agent of any corporation (~~(, twenty-five dollars, which)).~~ This amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.*

*\*Sec. 24 was vetoed, see message at end of chapter.*

**NEW SECTION. Sec. 25.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate March 13, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 15, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 12 and 24, Substitute Senate Bill No. 5471, entitled:

"AN ACT Relating to nonprofit corporations;"

Sections 12 and 24 amend current law and duplicate language contained in sections 6 and 8 of Substitute Senate Bill No. 5492 which I signed into law on May 7, 1993. For this reason, I have vetoed sections 12 and 24 of Substitute Senate Bill No. 5471.

With the exceptions of sections 12 and 24, Substitute Senate Bill No. 5471 is approved."

## CHAPTER 357

[Senate Bill 5484]

### LIEN LAWS—PRESERVATION OF RIGHTS UNDER PRIOR LAWS

Effective Date: 5/15/93

AN ACT Relating to preservation of rights under prior lien laws; adding a new section to chapter 60.04 RCW; providing a retroactive effective date; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 60.04 RCW to read as follows:

All rights acquired and liabilities incurred under acts or parts of act repealed by chapter 281, Laws of 1991, are hereby preserved, and all actions pending as of June 1, 1992, shall proceed under the law as it existed at the time chapter 281, Laws of 1991, took effect.

**NEW SECTION.** **Sec. 2.** This act is remedial in nature and shall be applied retroactively to June 1, 1992.

**NEW SECTION.** **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 20, 1993.

Passed the House April 6, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 358

[Engrossed-Senate Bill 5508]

DEPENDENT CHILDREN—CHILD SUPPORT OBLIGATION NOT TO INTERFERE  
WITH REUNIFICATION EFFORTS

Effective Date: 7/25/93

AN ACT Relating to child dependency cases; amending RCW 13.34.070, 13.34.160, 13.34.180, 26.19.071, and 26.19.075; and repealing RCW 13.34.162.

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

**Sec. 1.** RCW 13.34.070 and 1990 c. 246 s 2 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances do exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or [her] right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

~~((5))~~ (6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of shelter designated by the court.

~~((6))~~ (7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection ~~((4) or~~ (5) or (6) of this section,

and if the person fails to abide by the order, he may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:  
 VIOLATION OF THIS ORDER  
 IS SUBJECT TO PROCEEDING  
 FOR CONTEMPT OF COURT  
 PURSUANT TO RCW 13.34.070.

~~((7))~~ (8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy thereof by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

~~((8))~~ (9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department of social and health services social worker.

~~((9))~~ (10) In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States.

**Sec. 2.** RCW 13.34.160 and 1987 c 435 s 14 are each amended to read as follows:

In ~~((any case in which))~~ an action brought under this chapter, the court ~~((shall find the child dependent, it may in the same or subsequent proceeding upon the parent or parents, guardian, or other person having custody of said child, being duly summoned or voluntarily appearing, proceed to))~~ may inquire into the ability of ~~((such persons or person able))~~ the parent or parents of the child to pay child support ~~((the child or contribute thereto, the court))~~ and may enter ~~((such))~~ an order ~~((or decree as shall be according to equity in the premises, and))~~ of child support as set forth in chapter 26.19 RCW. The court may enforce the same by execution, or in any way in which a court of equity

may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW 26.23.050.

**Sec. 3.** RCW 13.34.180 and 1990 c 246 s 7 are each amended to read as follows:

A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(~~(7)~~)(8), and shall allege:

(1) That the child has been found to be a dependent child under RCW 13.34.030(2); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(2); and

(4) That the services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home;

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

**"NOTICE**

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.
2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to

represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

**Sec. 4.** RCW 26.19.071 and 1991 sp.s. c 28 s 5 are each amended to read as follows:

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime;
- (f) Contract-related benefits;
- (g) Income from second jobs;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Spousal maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits.



(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Aid to families with dependent children;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps.

Receipt of income and resources from aid to families with dependent children, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered spousal maintenance to the extent actually paid;
- (g) Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution; and
- (h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's

imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.

**Sec. 5.** RCW 26.19.075 and 1991 sp.s. c 28 s 6 are each amended to read as follows:

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse if the parent who is married to the new spouse is asking for a deviation based on any other reason. Income of a new spouse is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child; or

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children; ((or))

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving aid to families with dependent children. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

NEW SECTION. Sec. 6. RCW 13.34.162 and 1988 c 275 s 15 are each repealed.

Passed the Senate April 20, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 359

[Engrossed Senate Bill 5534]

### TERMINAL SAFETY AUDITS OF PRIVATE CARRIERS

Effective Date: 7/25/93

AN ACT Relating to terminal safety audits of private carriers; and adding a new section to chapter 81.80 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 81.80 RCW to read as follows:

(1)(a) The commission has the authority to conduct terminal safety audits of private carriers as defined in RCW 81.80.010(6). Only those private carriers operating vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, or those vehicles used in the transportation of hazardous materials in a quantity requiring placarding are subject to the commission's terminal audits.

(b) For purposes of this section, only those private carriers that have terminal operations in the state of Washington are subject to commission jurisdiction.

(2)(a) Those motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes from point of production to market, or in transporting farm machinery or farm supplies to or from a farm owned by the farmer are exempt from this section, but only if the vehicle is not used to transport hazardous materials of a type or quantity that require the vehicle to be placarded or operated within one hundred fifty air miles of the farmer's farm.

(b) Those motor vehicles that are owned and operated by the United States government, Washington state, or any county, city, or municipality are exempt from this section.

(3) Private carriers operating terminals in the state of Washington and having motor vehicles with a gross weight rating or gross combination weight rating of 26,001 pounds shall register with the commission. The commission shall establish, by rule, a fee not to exceed fifty dollars for an application filed

by a private motor carrier who has not filed a currently effective application for registration. The commission shall establish, by rule, an annual regulatory fee not to exceed ten dollars per vehicle.

Passed the Senate April 20, 1993.

Passed the House April 6, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 360

[Senate Bill 5635]

### HEALTH DISCIPLINARY AUTHORITY WRITTEN COMMUNICATIONS—PRIVACY REQUIREMENTS

Effective Date: 5/15/93

AN ACT Relating to health profession disciplinary authority written communications; reenacting and amending RCW 42.17.310; adding a new section to chapter 18.130 RCW; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 18.130 RCW to read as follows:

If the department communicates in writing to a complainant, or his or her representative, regarding his or her complaint, such communication shall not include the address or telephone number of the health care provider against whom he or she has complained. The department shall inform all applicants for a health care provider license of the provisions of this section and RCW 42.17.310 regarding the release of address and telephone information.

**Sec. 2.** RCW 42.17.310 and 1992 c 139 s 5 and 1992 c 71 s 12 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession,

the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying if the provider has provided the department with an accurate alternative or business address and telephone number.

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

~~((\*)~~) (y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

~~((\*)~~) (z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

~~((z)~~) (aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

~~((aa)~~) (bb) Financial and valuable trade information under RCW 51.36.120.

~~((bb)~~) (cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or a rape crisis center as defined in RCW 70.125.030.

~~((ee)~~) (dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

~~((dd)~~) (ee) Business related information protected from public inspection and copying under RCW 15.86.110.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

**NEW SECTION.** Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.



Passed the Senate April 20, 1993.  
Passed the House April 15, 1993.  
Approved by the Governor May 15, 1993.  
Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 361**

[Senate Bill 5675]

STORM WATER CONTROL FACILITIES—COUNTY COLLECTION OF  
DEBT SERVICE ALLOCATIONS

Effective Date: 7/25/93

AN ACT Relating to financing debt for storm water control facilities; adding a new section to chapter 36.89 RCW; and adding a new section to chapter 36.94 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 36.89 RCW to read as follows:

Whenever a city or town annexes an area, or a city or town incorporates an area, and the county has issued revenue bonds or general obligation bonds to finance storm water control facilities that are payable in whole or in part from rates or charges imposed in the area, the county shall continue imposing all portions of the rates or charges that are allocated to payment of the debt service on bonds in that area after the effective date of the annexation or official date of the incorporation until: (1) The debt is retired; (2) any debt that is issued to refinance the underlying debt is retired; or (3) the city or town reimburses the county amount that is sufficient to retire that portion of the debt borne by the annexed or incorporated area. The county shall construct all facilities included in the storm water plan intended to be financed by the proceeds of such bonds. If the county provides storm water management services to the city or town by contract, the contract shall consider the value of payments made by property owners to the county for the payment of debt service.

The provisions of this section apply whether or not the bonds finance facilities that are geographically located within the area that is annexed or incorporated.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 36.94 RCW to read as follows:

Whenever a city or town annexes an area, or a city or town incorporates an area, and the county has issued revenue bonds or general obligation bonds to finance storm or surface water drains or facilities that are payable in whole or in part from rates or charges imposed in the area, the county shall continue imposing all portions of the rates or charges that are allocated to payment of the debt service on bonds in that area after the effective date of the annexation or official date of the incorporation until: (1) The debt is retired; (2) any debt that is issued to refinance the underlying debt is retired; or (3) the city or town

reimburses the county amount that is sufficient to retire that portion of the debt borne by the annexed or incorporated area. The county shall construct all facilities included in the storm water plan intended to be financed by the proceeds of such bonds. If the county provides storm water management services to the city or town by contract, the contract shall consider the value of payments made by property owners to the county for the payment of debt service.

The provisions of this section apply whether or not the bonds finance facilities that are geographically located within the area that is annexed or incorporated.

Passed the Senate April 25, 1993.

Passed the House April 25, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 362

[Senate Bill 5759]

### INVOLUNTARY COMMITMENT OF CHEMICALLY DEPENDENT PERSONS

Effective Date: 7/25/93

AN ACT Relating to persons incapacitated by alcohol and other drugs; amending RCW 70.96A.140; and creating a new section.

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

**Sec. 1.** RCW 70.96A.140 and 1991 c 364 s 10 are each amended to read as follows:

(1) When a designated chemical dependency specialist receives information alleging that a person is incapacitated as a result of ~~((alcoholism, or in the case of a minor incapacitated by alcoholism and/or other drug addiction))~~ chemical dependency, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in ~~((an alcohol treatment program))~~ a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is ~~((an alcoholic who))~~ chemically dependent and is incapacitated by alcohol(~~(s)~~) or ~~((in the case of a minor incapacitated by alcoholism and/or other))~~ drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification or chemical dependency treatment ~~((for alcoholism))~~ pursuant to RCW 70.96A.110, ~~((or in the case of a minor, detoxification or treatment for alcohol or drug addiction,))~~ and is in need of a more sustained treatment

program, or that the person is (~~an alcoholic, or in the case of a minor, an alcoholic or other drug addict, who~~) chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.050, as now or hereafter amended, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is (~~an alcoholic, or in the~~

~~case of a minor incapacitated by alcoholism and/or other drug addiction, must~~) chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he or she is ~~((an alcoholic, or, in the case of a minor, an alcoholic or other drug addict,))~~ chemically dependent and likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed

under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of ~~((an alcoholic))~~ a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, ~~((or, in the case of a minor, an alcoholic or other drug addict,))~~ the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of ~~((an alcoholic))~~ a chemically dependent person committed on the grounds of the need of treatment and incapacity ~~((or, in the case of a minor, incapacitated by alcoholism and/or other drug addiction)),~~ that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original

commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

NEW SECTION. **Sec. 2.** The purpose of this act is solely to provide authority for the involuntary commitment of persons suffering from chemical dependency within available funds and current programs and facilities. Nothing in this act shall be construed to require the addition of new facilities nor affect the department of social and health services' authority for the uses of existing programs and facilities authorized by law.

Passed the Senate March 10, 1993.

Passed the House April 16, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 363

[Second Substitute Senate Bill 5836]

RELATIONSHIP BETWEEN STATE AND INSTITUTIONS OF  
HIGHER EDUCATION REDEFINED

Effective Date: 7/1/93

AN ACT Relating to higher education; amending RCW 28B.80.330; adding new sections to chapter 28B.80 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. The legislature finds a need to redefine the relationship between the state and its postsecondary education institutions through a compact based on trust, evidence, and a new alignment of responsibilities. As the proportion of the state budget dedicated to postsecondary education programs has continued to decrease and the opportunity for this state's citizens to participate in such programs also has declined, the state institutions of higher education have increasingly less flexibility to respond to emerging challenges through innovative management and programming. The legislature finds that this state has not provided its institutions of higher education with the ability to effectively achieve state-wide goals and objectives to increase access to, improve the quality of, and enhance the accountability for its postsecondary education system.

Therefore, the legislature declares that the policy of the state of Washington is to create an environment in which the state institutions of higher education have the authority and flexibility to enhance attainment of state-wide goals and objectives for the state's postsecondary education system through decisions and actions at the local level. The policy shall have the following attributes:

(1) The accomplishment of equitable and adequate enrollment by significantly raising enrollment lids, adequately funding those increases, and providing sufficient financial aid for the neediest students;

(2) The development and use of a new definition of quality measured by effective operations and clear results; the efficient use of funds to achieve well-educated students;

(3) The attainment of a new resource management relationship that removes the state from micromanagement, allows institutions greater management autonomy to focus resources on essential functions, and encourages innovation; and

(4) The development of a system of coordinated planning and sufficient feedback to assure policymakers and citizens that students are succeeding and resources are being prudently deployed.

**NEW SECTION.** Sec. 2. A new section is added to chapter 28B.80 RCW to read as follows:

(1) At the local level, the higher education institutional responsibilities include but are not limited to:

(a) Development and provision of strategic plans under the guidelines established by the higher education coordinating board. In developing their strategic plans, the research universities shall consider the feasibility of significantly increasing the number of evening graduate classes;

(b) For the four-year institutions of higher education, timely provision of information required by the higher education coordinating board to report to the governor, the legislature, and the citizens;

(c) Provision of local student financial aid delivery systems to achieve both state-wide goals and institutional objectives in concert with state-wide policy; and

(d) Operating as efficiently as feasible within institutional missions and goals.

(2) At the state level, the higher education coordinating board shall be responsible for:

(a) Delineation and coordination of strategic plans to be prepared by the institutions;

(b) Preparation of reports to the governor, the legislature, and the citizens on program accomplishments and use of resources by the institutions;

(c) Administration and policy implementation for state-wide student financial aid programs; and

(d) Assistance to institutions in improving operational efficiency through measures that include periodic review of program efficiencies.

(3) At the state level, on behalf of community colleges and technical colleges, the state board for community and technical colleges shall coordinate and report on the system's strategic plans and shall provide any information required of its colleges by the higher education coordinating board.

**NEW SECTION.** Sec. 3. A new section is added to chapter 28B.80 RCW to read as follows:

In cooperation with institutions of higher education, the state board for community and technical colleges, and appropriate state and local agencies, the higher education coordinating board may identify methods to reduce administrative barriers to efficient institutional operations. These methods may include waivers of statutory requirements and administrative rules. The higher education coordinating board shall report to the governor and appropriate legislative committees its recommendations for any statutory changes necessary to enhance institutional efficiencies. In cooperation with affected institutions, the board shall work with appropriate agencies to reduce administrative barriers that do not require statutory changes.

**NEW SECTION.** Sec. 4. A new section is added to chapter 28B.80 RCW to read as follows:

The higher education coordinating board, in conjunction with the four-year institutions of higher education, shall conduct a study of higher education system operations to identify efficiencies to increase access to, improve the quality of,



and reduce the cost of higher education. This study shall include but not be limited to:

(1) Examining potential unnecessary duplicative and low-productivity programs for possible consolidation or termination;

(2) Developing criteria for and conducting an evaluation of faculty productivity;

(3) Reviewing and developing recommendations on appropriate institutional roles for providing remedial instruction;

(4) Exploring the potential for greater use of the public higher education system physical plant and other resources through such means as expanded operations during summer terms, evenings, and weekends;

(5) Examining the effectiveness of proposals on variable tuition rates and faculty salary incentives; and

(6) Identifying ways for institutions to share resources, faculty, and curricula through collaboration with other public and private postsecondary institutions and common school districts in their service areas to increase student opportunities and reduce costs. Analyses shall include clear articulation of functions among institutions, means to reduce duplication, and policies to facilitate student movement among institutions.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28B.80 RCW to read as follows:

The higher education coordinating board, in conjunction with the state board for community and technical colleges and the institutions of higher education, shall report regularly to the legislature and the citizens the accomplishments of, expenditures for, and requirements of the postsecondary educational system in the state of Washington. The state board for community and technical colleges and the state institutions of higher education shall report uniformly to the higher education coordinating board, on an annual basis, the information necessary to prepare the report. Independent colleges and universities are encouraged to cooperate with this effort and to provide to the board information in a uniform format developed by the board, in cooperation with the institutions. Examples of performance measures that could be included are:

(1) Retention and graduation rates;

(2) Average time to a degree;

(3) Credit hours per degree awarded;

(4) Degrees awarded by discipline and by level;

(5) Multiple degrees;

(6) Measures taken to reduce duplicative courses, programs, and requirements;

(7) Student-faculty contact hours;

(8) Placement rates;

(9) Success in recruiting and graduating underrepresented groups;

(10) Various fiscal and management measures; and

(11) Demographic information on enrolled students, including but not limited to socioeconomic and ethnic backgrounds.

**Sec. 6.** RCW 28B.80.330 and 1985 c 370 s 4 are each amended to read as follows:

The board shall perform the following planning duties in consultation with the four-year institutions, the community and technical college system, and when appropriate the ~~((commission for vocational education))~~ work force training and education coordinating board, the superintendent of public instruction ~~((for the vocational technical institutes))~~, and the independent higher educational institutions:

- (1) Develop and establish role and mission statements for each of the four-year institutions and for the community and technical college system;
- (2) Identify the state's higher education goals, objectives, and priorities;
- (3) Prepare a comprehensive master plan which includes but is not limited to:

- (a) Assessments of the state's higher education needs. These assessments may include, but are not limited to: The basic and continuing needs of various age groups; business and industrial needs for a skilled workforce; analyses of demographic, social, and economic trends; consideration of the changing ethnic composition of the population and the special needs arising from such trends; college attendance, retention, and dropout rates, and the needs of recent high school graduates and placebound adults. The board should consider the needs of residents of all geographic regions, but its initial priorities should be applied to heavily populated areas underserved by public institutions;

- (b) Recommendations on enrollment and other policies and actions to meet those needs;

- (c) Guidelines for continuing education, adult education, public service, and other higher education programs.

The initial plan shall be submitted to the governor and the legislature by December 1, 1987. Comments on the plan from the board's advisory committees and the institutions shall be submitted with the plan.

The plan shall be updated ~~((biennially))~~ every four years, and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan, and the ~~((biennial))~~ updates. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan;

- (4) Review, evaluate, and make recommendations on operating and capital budget requests from four-year institutions and the community and technical college system, based on the elements outlined in subsections (1), (2), and (3) of this section, and on guidelines which outline the board's fiscal priorities. These guidelines shall be distributed to the institutions and the community college board by December of each odd-numbered year. The institutions and the community college board shall submit an outline of their proposed budgets,

identifying major components, to the board no later than August 1 of each even-numbered year. The board shall submit recommendations on the proposed budgets and on the board's budget priorities to the office of financial management before October 15 of each even-numbered year, and to the legislature by January 1 of each odd-numbered year;

(5) Recommend legislation affecting higher education;

(6) Recommend tuition and fees policies and levels based on comparisons with peer institutions;

(7) Establish priorities and develop recommendations on financial aid based on comparisons with peer institutions;

(8) Prepare recommendations on merging or closing institutions; and

(9) Develop criteria for identifying the need for new baccalaureate institutions.

**NEW SECTION.** Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 24, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 364

[Senate Bill 5838]

### ENERGY SITING PROCESS REVIEW COMMITTEE

Effective Date: 7/25/93

AN ACT Relating to energy siting review; creating new sections; and providing an expiration date.

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

**NEW SECTION.** Sec. 1. The legislature finds that meeting future energy demands within the state will require the siting of new generating facilities, renewable resources, transmission facilities, and natural gas pipelines. The legislature further finds that current siting processes, designed to accommodate large thermal power plants, do not allow efficient development of current energy supply options. The legislature further finds that a comprehensive review and revision of siting policy is needed to ensure timely development of adequate, environmentally sound energy resources at an affordable cost.

**NEW SECTION.** Sec. 2. There is created an energy siting process review committee. The committee shall review the siting processes currently applicable to energy facilities, including: (1) Major thermal power plants; (2) natural gas-fired combustion turbines; (3) cogeneration plants; (4) hydroelectric facilities; (5) other renewable resources, including wind, solar, geothermal, and biomass

energy; (6) natural gas pipelines; and (7) electric transmission lines. The committee shall recommend changes to statutes, rules, and policies that will reduce the cost and allow timely siting of new resources while preserving environmental quality, recognizing and ensuring coordination with applicable federal licensing and permitting authorities, promoting energy system reliability, allowing public review and comment, and ensuring an appropriate role for local government.

**NEW SECTION. Sec. 3.** The energy siting process review committee shall consist of fifteen members, as follows:

(1) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

(2) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives; and

(3) Eleven members appointed by the governor, representing the following interests:

(a) One member representing cities;

(b) One member representing counties;

(c) One member representing publicly owned electric utilities;

(d) One member representing investor-owned electric utilities;

(e) One member representing natural gas local distribution utilities;

(f) One member representing natural gas pipeline companies;

(g) One member representing environmental organizations;

(h) One member representing independent power producers; and

(i) Three members representing citizens at large.

Members appointed by the governor shall represent the various geographical regions of the state.

The chairperson shall be selected by the governor from the citizen members of the committee.

Members appointed by the governor shall receive no compensation for their services but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed for expenses as provided in RCW 44.04.120.

**NEW SECTION. Sec. 4.** The state energy office shall provide staff support to the energy siting process review committee.

**NEW SECTION. Sec. 5.** The energy siting process review committee shall report its findings and recommendations, including proposed legislation, to the governor and appropriate standing committees of the legislature no later than December 1, 1993.

**NEW SECTION. Sec. 6.** This act shall expire June 30, 1994.

Passed the Senate April 20, 1993.  
Passed the House April 12, 1993.  
Approved by the Governor May 15, 1993.  
Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 365**

[Engrossed Substitute Senate Bill 5844]

**VOLUNTEERS SERVING AT-RISK CHILDREN—COLLABORATIVE  
PROGRAMS AUTHORIZED**

**Effective Date: 7/25/93**

AN ACT Relating to volunteers serving the needs of at-risk children; and adding a new section to chapter 43.150 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 43.150 RCW to read as follows:

A volunteer organization or individual volunteer may assist a public agency, with the agency's approval, in a collaborative program designed to serve the needs of at-risk children. The center, with the advice and counsel of the attorney general, shall develop guidelines defining at-risk children and establish reasonable safety standards to protect the safety of program participants and volunteers, including but not limited to background checks as appropriate as provided in RCW 43.43.830 through 43.43.834. In carrying out the volunteer activity, the individual volunteer or member of the volunteer organization shall not be considered to be an employee or agent of any public agency involved in the collaborative program. The public agency shall have no liability for any acts of the individual volunteer or volunteer organization. Prior to participation, a volunteer and the public agency administering the collaborative program shall sign a written master agreement, approved in form by the attorney general, that includes provisions defining the scope of the volunteer activities and waiving any claims against each other. A volunteer organization or individual volunteer shall not be liable for civil damages resulting from any act or omission arising from volunteer activities which comply with safety standards issued by the center for volunteerism and citizen service, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

Passed the Senate April 25, 1993.  
Passed the House April 25, 1993.  
Approved by the Governor May 15, 1993.  
Filed in Office of Secretary of State May 15, 1993.

CHAPTER 366

[Engrossed Substitute Senate Bill 5911]

SMALL BUSINESS EXPORT FINANCE ASSISTANCE CENTER—POWERS AND DUTIES

Effective Date: 7/25/93

AN ACT Relating to economic development; and amending RCW 43.210.110.

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

**Sec. 1.** RCW 43.210.110 and 1991 c 314 s 12 are each amended to read as follows:

(1) The small business export finance assistance center has the following powers and duties when exercising its authority under RCW 43.210.100(3):

(a) Solicit and accept grants, contributions, and any other financial assistance from the federal government, federal agencies, and any other public or private sources to carry out its purposes;

(b) Offer comprehensive export assistance and counseling to manufacturers relatively new to exporting with gross annual revenues less than twenty-five million dollars. As close to ~~((ninety))~~ seventy-five percent as possible of each year's new cadre of clients must have gross annual revenues of less than five million dollars at the time of their initial contract. At least fifty percent of each year's new cadre of clients shall be from timber impact areas as defined in RCW 43.31.601. Counseling may include, but not be limited to, helping clients obtain debt or equity financing, in constructing competent proposals, and assessing federal guarantee and/or insurance programs that underwrite exporting risk; assisting clients in evaluating their international marketplace by developing marketing materials, assessing and selecting targeted markets; assisting firms in finding foreign customers by conducting foreign market research, evaluating distribution systems, selecting and assisting in identification of and/or negotiations with foreign agents, distributors, retailers, and by promoting products through attending trade shows abroad; advising companies on their products, guarantees, and after sales service requirements necessary to compete effectively in a foreign market; designing a competitive strategy for a firm's products in targeted markets and methods of minimizing their commercial and political risks; securing for clients specific assistance as needed, outside the center's field of expertise, by referrals to other public or private organizations. The Pacific Northwest export assistance project shall focus its efforts on facilitating export transactions for its clients, and in doing so, provide such technical services as are appropriate to accomplish its mission either with staff or outside consultants;

(c) Sign three-year counseling agreements with its clients that provide for termination if adequate funding for the Pacific Northwest export assistance project is not provided in future appropriations. Counseling agreements shall not be renewed unless there are compelling reasons to do so, and under no circumstances shall they be renewed for more than two additional years. A counseling agreement may not be renewed more than once. The counseling agreements shall have mutual performance clauses, that if not met, will be

grounds for releasing each party, without penalty, from the provisions of the agreement. Clients shall be immediately released from a counseling agreement with the Pacific Northwest export assistance project, without penalty, if a client wishes to switch to a private export management service and produces a valid contract signed with a private export management service, or if the president of the small business export finance assistance center determines there are compelling reasons to release a client from the provisions of the counseling agreement;

(d) May contract with private or public international trade education services to provide Pacific Northwest export assistance project clients with training in international business. The president and board of directors shall decide the amount of funding allocated for educational services based on the availability of resources in the operating budget of the Pacific Northwest export assistance project;

(e) May contract with the Washington state international trade fair to provide services for Pacific Northwest export assistance project clients to participate in one trade show annually. The president and board of directors shall decide the amount of funding allocated for trade fair assistance based on the availability of resources in the operating budget of the Pacific Northwest export assistance project;

(f) Provide biennial assessments of its performance. Project personnel shall work with the department of revenue and employment security department to confidentially track the performance of the project's clients in increasing tax revenues to the state, increasing gross sales revenues and volume of products destined to foreign clients, and in creating new jobs for Washington citizens. A biennial report shall be prepared for the governor and legislature to assess the costs and benefits to the state from creating the project. The president of the small business export finance assistance center shall design an appropriate methodology for biennial assessments in consultation with the director of the department of trade and economic development and the director of the Washington state department of agriculture. The department of revenue and the employment security department shall provide data necessary to complete this biennial evaluation, if the data being requested is available from existing data bases. Client-specific information generated from the files of the department of revenue and the employment security department for the purposes of this evaluation shall be kept strictly confidential by each department and the small business export finance assistance center;

(g) Take whatever action may be necessary to accomplish the purposes set forth in RCW 43.210.070 and 43.210.100 through 43.210.120; and

(h) Limit its assistance to promoting the exportation of value-added manufactured goods. The project shall not provide counseling or assistance, under any circumstances, for the importation of foreign made goods into the United States.

(2) The Pacific Northwest export assistance project shall not, under any circumstances, assume ownership or take title to the goods of its clients.

(3) The Pacific Northwest export assistance project may not use any Washington state funds which come from the public treasury of the state of Washington to make loans or to make any payment under a loan guarantee agreement. Under no circumstances may the center use any funds received under RCW 43.210.050 to make or assist in making any loan or to pay or assist in paying any amount under a loan guarantee agreement. Debts of the center shall be center debts only and may be satisfied only from the resources of the center. The state of Washington shall not in any way be liable for such debts.

(4) The Pacific Northwest export assistance project shall make every effort to seek nonstate funds to supplement its operations.

(5) The small business export finance assistance center and its Pacific Northwest export assistance project shall take whatever steps are necessary to provide its services, if requested, to the states of Oregon, Idaho, Montana, Alaska, and the Canadian provinces of British Columbia and Alberta. Interstate services shall not be provided by the Pacific Northwest export assistance project during its first biennium of operation. The provision of services may be temporary and subject to the payment of fees, or each state may request permanent services contingent upon a level of permanent funding adequate for services provided. Temporary services and fees may be negotiated by the small business export finance assistance center's president subject to approval of the board of directors. The president of the small business export finance assistance center may enter into negotiations with neighboring states to contract for delivery of the project's services. Final contracts for providing the project's counseling and services outside of the state of Washington on a permanent basis shall be subject to approval of the governor, appropriate legislative oversight committees, and the small business export finance assistance center's board of directors.

(6) The small business export finance assistance center may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the Pacific Northwest export assistance project and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(7) The president of the small business export finance assistance center, in consultation with the board of directors, may use the following formula in determining the number of clients that can be reasonably served by the Pacific Northwest export assistance project relative to its appropriation. Divide the amount appropriated for administration of the Pacific Northwest export assistance project by the marginal cost of adding each additional Pacific Northwest export assistance project client. For the purposes of this calculation, and only for the first biennium of operation, the biennial marginal cost of adding each additional Pacific Northwest export assistance project client shall be fifty-seven thousand ninety-five dollars. The biennial marginal cost of adding each additional client



after the first biennium of operation shall be established from the actual operating experience of the Pacific Northwest export assistance project.

(8) All receipts from the Pacific Northwest export assistance project shall be deposited into the general fund.

Passed the Senate April 19, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 367

[Engrossed Substitute Senate Bill 5948]

### UNIFORM DISCIPLINARY ACT—RESPONSE TO VIOLATIONS

Effective Date: 7/25/93

AN ACT Relating to procedures for responding to violations of the uniform disciplinary act; amending RCW 18.130.090, 18.130.175, 18.130.040, 18.130.050, 18.130.160, 18.130.185, 18.130.186, 18.130.300, 18.135.070, 18.64.160, 18.64A.050, 18.72.340, 18.72.380, 18.130.190, 18.130.165, and 18.130.050; reenacting and amending RCW 18.130.180; adding new sections to chapter 18.130 RCW; adding a new section to chapter 18.135 RCW; adding a new section to chapter 18.64 RCW; adding a new section to chapter 18.64A RCW; and repealing RCW 18.135.080, 18.64.260, and 18.71A.070.

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

**Sec. 1.** RCW 18.130.090 and 1986 c 259 s 6 are each amended to read as follows:

(1) If the disciplining authority determines, upon investigation, that there is reason to believe a violation of RCW 18.130.180 has occurred, a statement of charge or charges shall be prepared and served upon the license holder or applicant at the earliest practical time. The statement of charge or charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder or applicant must file a request for hearing with the disciplining authority within twenty days after being served the statement of charges. If the twenty-day limit results in a hardship upon the license holder or applicant, he or she may request for good cause an extension not to exceed sixty additional days. If the disciplining authority finds that there is good cause, it shall grant the extension. The failure to request a hearing constitutes a default, whereupon the disciplining authority may enter a decision on the basis of the facts available to it.

(2) If a hearing is requested, the time of the hearing shall be fixed by the disciplining authority as soon as convenient, but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. ~~((A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. The notice shall also notify the license holder or applicant that a record of the proceeding will be kept, that he or she will have the opportunity to appear personally and to have counsel~~

~~present, with the right to produce witnesses, who will be subject to cross-examination, and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her, to examine such documentary evidence as may be produced against him or her, to conduct depositions, and to have subpoenas issued by the disciplining authority.))~~

NEW SECTION. Sec. 2. A new section is added to chapter 18.130 RCW to read as follows:

**REQUIRED UNIFORM PROCEDURES.** (1) The secretary shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a licensee, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for the establishing time lines for discovery, settlement, and scheduling hearings.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the licensee, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplinary authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplinary authority authorized under this chapter. The presiding officer shall not vote on any final decision. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplinary authorities, shall adopt procedures for implementing this subsection. This subsection shall not apply to the board of funeral directors and embalmers.

**Sec. 3.** RCW 18.130.175 and 1991 c 3 s 270 are each amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or drug treatment shall be

provided by approved treatment ((facilities)) programs under RCW ((70.96A.020(2))) 70.96A.020: PROVIDED, That nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or drug treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the

disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;
- (iv) Persons reporting a license holder as being impaired or providing information about the license holder's impairment; and
- (v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The immunity provided in this section is in addition to any other immunity provided by law.

~~((8) In addition to health care professionals governed by this chapter, this section also applies to pharmacists under chapter 18.64 RCW and pharmacy assistants under chapter 18.64A RCW. For that purpose, the board of pharmacy shall be deemed to be the disciplining authority and the substance abuse monitoring program shall be in lieu of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of pharmacy shall adjust license fees to offset the costs of this program.))~~

**Sec. 4.** RCW 18.130.040 and 1992 c 128 s 6 are each amended to read as follows:

(1) This chapter applies only to the secretary and the boards having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
  - (ii) Naturopaths licensed under chapter 18.36A RCW;
  - (iii) Midwives licensed under chapter 18.50 RCW;
  - (iv) Ocularists licensed under chapter 18.55 RCW;
  - (v) Massage operators and businesses licensed under chapter 18.108 RCW;
  - (vi) Dental hygienists licensed under chapter 18.29 RCW;
  - (vii) Acupuncturists certified under chapter 18.06 RCW;
  - (viii) Radiologic technologists certified under chapter 18.84 RCW;
  - (ix) Respiratory care practitioners certified under chapter 18.89 RCW;
  - (x) Persons registered or certified under chapter 18.19 RCW;
  - (xi) Persons registered as nursing pool operators;
  - (xii) Nursing assistants registered or certified under chapter ~~((18.52B))~~  
18.88A RCW;
  - (xiii) Health care assistants certified under chapter 18.135 RCW;
  - (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
  - ~~((xiv))~~ (xv) Sex offender treatment providers certified under chapter 18.155 RCW; and
  - ~~((xv))~~ (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205.
- (b) The boards having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
  - (ii) The chiropractic disciplinary board as established in chapter 18.26 RCW governing licenses issued under chapter 18.25 RCW;
  - (iii) The dental disciplinary board as established in chapter 18.32 RCW;
  - (iv) The council on hearing aids as established in chapter 18.35 RCW;
  - (v) The board of funeral directors and embalmers as established in chapter 18.39 RCW;
  - (vi) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
  - (vii) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
  - (viii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
  - (ix) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
  - (x) The medical disciplinary board as established in chapter 18.72 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
  - ~~((x))~~ (xi) The board of physical therapy as established in chapter 18.74 RCW;
  - ~~((xi))~~ (xii) The board of occupational therapy practice as established in chapter 18.59 RCW;

~~((xiii))~~ (xiii) The board of practical nursing as established in chapter 18.78 RCW;

~~((xiv))~~ (xiv) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

~~((xv))~~ (xv) The board of nursing as established in chapter 18.88 RCW; and

~~((xvi))~~ (xvi) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. However, the board of chiropractic examiners has authority over issuance and denial of licenses provided for in chapter 18.25 RCW, the board of dental examiners has authority over issuance and denial of licenses provided for in RCW 18.32.040, and the board of medical examiners has authority over issuance and denial of licenses and registrations provided for in chapters 18.71 and 18.71A RCW. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

Sec. 5. RCW 18.130.050 and 1987 c 150 s 2 are each amended to read as follows:

The disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

(3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;

(4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the disciplining authority;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the disciplining authority shall make the final decision regarding disposition of the license;

(9) To use individual members of the boards to direct investigations. However, the member of the board shall not subsequently participate in the hearing of the case;

(10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(11) To contract with licensees or other persons or organizations to provide services necessary for the monitoring and supervision of licensees who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter;

~~(14) ((To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;~~

~~(15))~~ To designate individuals authorized to sign subpoenas and statements of charges.

Sec. 6. RCW 18.130.160 and 1986 c 259 s 8 are each amended to read as follows:

Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may issue an order providing for one or any combination of the following:

(1) Revocation of the license;

(2) Suspension of the license for a fixed or indefinite term;

(3) Restriction or limitation of the practice;

(4) Requiring the satisfactory completion of a specific program of remedial education or treatment;

(5) The monitoring of the practice by a supervisor approved by the disciplining authority;

(6) Censure or reprimand;

(7) Compliance with conditions of probation for a designated period of time;

(8) Payment of a fine for each violation of this chapter, not to exceed ~~((one))~~ five thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request;

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

NEW SECTION. Sec. 7. A new section is added to chapter 18.130 RCW to read as follows:

(1) Prior to serving a statement of charges under RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a statement of allegations to the licensee or applicant along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The disciplinary authority and the applicant or licensee may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct alleged to have been committed or the alleged basis for determining that the applicant or licensee is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; and an agreement on the part of the licensee or applicant that the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be imposed as part of the stipulation, except that no fine may be imposed but the licensee or applicant may agree to reimburse the disciplinary authority the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the disciplinary authority to forego further disciplinary proceedings concerning



the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the disciplinary authority may proceed to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee or applicant and the disciplinary authority, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the disciplinary authority. Should the licensee or applicant fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the disciplinary authority may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under RCW 18.130.165.

**Sec. 8.** RCW 18.130.185 and 1987 c 150 s 8 are each amended to read as follows:

If a person or business regulated by this chapter violates RCW 18.130.170 or 18.130.180, the attorney general, any prosecuting attorney, the ~~((director))~~ secretary, the board, or any other person may maintain an action in the name of the state of Washington to enjoin the person from committing the violations. The injunction shall not relieve the offender from criminal prosecution, but the remedy by injunction shall be in addition to the liability of the offender to criminal prosecution and disciplinary action.

**Sec. 9.** RCW 18.130.186 and 1989 c 125 s 3 are each amended to read as follows:

(1) To implement a substance abuse monitoring program for license holders specified under RCW 18.130.040, who are impaired by substance abuse, the disciplinary authority may enter into a contract with a voluntary substance abuse program under RCW 18.130.175. The program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired license holders to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired license holders including those ordered by the disciplinary authority;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired license holders; and
- (g) Performing other activities as agreed upon by the disciplinary authority.

(2) A contract entered into under subsection (1) of this section may be financed by a surcharge on each license issuance or renewal to be collected by the department of ~~((licensing))~~ health from the license holders of the same

regulated health profession. These moneys shall be placed in the health professions account to be used solely for the implementation of the program.

**Sec. 10.** RCW 18.130.300 and 1984 c 279 s 21 are each amended to read as follows:

The ~~((director))~~ secretary, members of the boards, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties.

**Sec. 11.** RCW 18.135.070 and 1984 c 281 s 7 are each amended to read as follows:

The licensing authority of health care facilities or the ~~((disciplinary board))~~ disciplining authority of the delegating or supervising health care practitioner shall investigate all complaints or allegations of violations of proper certification of a health care assistant or violations of delegation of authority or supervision. A substantiated violation shall constitute sufficient cause for disciplinary action by the licensing authority of a health care facility or the ~~((disciplinary board))~~ disciplining authority of the health care practitioner.

NEW SECTION. **Sec. 12.** A new section is added to chapter 18.135 RCW to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the discipline of certificate holders under this chapter. The secretary shall be the disciplining authority under this chapter.

**Sec. 13.** RCW 18.64.160 and 1985 c 7 s 60 are each amended to read as follows:

In addition to the grounds under RCW 18.130.170 and 18.130.180, the board of pharmacy ~~((shall have the power to refuse, suspend, or revoke))~~ may take disciplinary action against the license of any pharmacist or intern upon proof that:

(1) His or her license was procured through fraud, misrepresentation, or deceit;

(2) ~~((He or she has been convicted of a felony relating to his or her practice as a pharmacist;~~

~~(3) He or she has committed any act involving moral turpitude, dishonesty, or corruption, if the act committed directly relates to the pharmacist's fitness to practice pharmacy. Upon such conviction, however, the judgment and sentence shall be conclusive evidence at the ensuing disciplinary hearing of the guilt of the respondent pharmacist of the crime described in the indictment or information, and of his or her violation of the statute upon which it is based;~~

~~(4) He or she is unfit to practice pharmacy because of habitual intemperance in the use of alcoholic beverages, drugs, controlled substances, or any other substance which impairs the performance of professional duties;~~

~~(5) He or she exhibits behavior which may be due to physical or mental impairment, which creates an undue risk of causing harm to him or herself or to other persons when acting as a licensed pharmacist or intern;~~

~~(6) He or she has incompetently or negligently practiced pharmacy, creating an unreasonable risk of harm to any individual;~~

~~(7) His or her legal authority to practice pharmacy, issued by any other properly constituted licensing authority of any other state, has been and is currently suspended or revoked;~~

~~(8))~~ In the event that a pharmacist is determined by a court of competent jurisdiction to be mentally incompetent, the pharmacist shall automatically have his or her license suspended by the board upon the entry of the judgment, regardless of the pendency of an appeal;

~~((9))~~ (3) He or she has knowingly violated or permitted the violation of any provision of any state or federal law, rule, or regulation governing the possession, use, distribution, or dispensing of drugs, including, but not limited to, the violation of any provision of this chapter, Title 69 RCW, or rule or regulation of the board;

~~((10))~~ (4) He or she has knowingly allowed any unlicensed person to take charge of a pharmacy or engage in the practice of pharmacy, except a pharmacy intern or pharmacy assistant acting as authorized in this chapter or chapter 18.64A RCW in the presence of and under the immediate supervision of a licensed pharmacist;

~~((11))~~ (5) He or she has compounded, dispensed, or caused the compounding or dispensing of any drug or device which contains more or less than the equivalent quantity of ingredient or ingredients specified by the person who prescribed such drug or device: PROVIDED, HOWEVER, That nothing herein shall be construed to prevent the pharmacist from exercising professional judgment in the preparation or providing of such drugs or devices.

~~((In any case of the refusal, suspension, or revocation of a license by said board of pharmacy under the provisions of this chapter, said board shall proceed in accordance with chapter 34.05 RCW.))~~

NEW SECTION. Sec. 14. A new section is added to chapter 18.64 RCW to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses of pharmacists and pharmacy interns, and the discipline of licensed pharmacists and pharmacy interns under this chapter.

Sec. 15. RCW 18.64A.050 and 1989 1st ex.s. c 9 s 424 are each amended to read as follows:

In addition to the grounds under RCW 18.130.170 and 18.130.180, the board of pharmacy ((shall have the power to refuse, suspend, or revoke)) may take disciplinary action against the certificate of any pharmacy assistant upon proof that:

(1) His or her certificate was procured through fraud, misrepresentation or deceit;

(2) He or she has been found guilty of any offense in violation of the laws of this state relating to drugs, poisons, cosmetics or drug sundries by any court of competent jurisdiction. Nothing herein shall be construed to affect or alter the provisions of RCW 9.96A.020;

~~(3) ((He or she is unfit to perform his or her duties because of habitual intoxication or abuse of controlled substances;~~

~~(4))~~ (4) He or she has exhibited gross incompetency in the performance of his or her duties;

~~((5))~~ (4) He or she has willfully or repeatedly violated any of the rules and regulations of the board of pharmacy or of the department;

~~((6))~~ (5) He or she has willfully or repeatedly performed duties beyond the scope of his or her certificate in violation of the provisions of this chapter; or

~~((7))~~ (6) He or she has impersonated a licensed pharmacist.

~~((In any case of the refusal, suspension or revocation of a certificate by the board, a hearing shall be conducted in accordance with RCW 18.64.160, as now or hereafter amended, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW.))~~

NEW SECTION. Sec. 16. A new section is added to chapter 18.64A RCW to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certificates and the discipline of certificants under this chapter.

Sec. 17. RCW 18.72.340 and 1986 c 300 s 6 are each amended to read as follows:

(1) Every institution or organization providing professional liability insurance to physicians shall send a complete report to the medical disciplinary board of all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of medicine. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a ~~((year))~~ five-year time period as the result of the alleged physician's incompetence or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

(2) Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

Sec. 18. RCW 18.72.380 and 1991 c 3 s 170 are each amended to read as follows:

There is hereby levied to be collected by the department of health from every physician and surgeon licensed pursuant to chapter 18.71 RCW and every physician assistant licensed pursuant to chapter 18.71A RCW an annual medical

disciplinary assessment equal to the license renewal fee established under RCW 43.70.250. The assessment levied pursuant to this ~~((subsection))~~ section is in addition to any license renewal fee established under RCW 43.70.250.

**Sec. 19.** RCW 18.130.190 and 1991 c 3 s 271 are each amended to read as follows:

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050. ~~((The secretary shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection.))~~

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall ~~((not))~~ relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or

civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

~~((2))~~ (6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

~~((2))~~ (7) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

**Sec. 20.** RCW 18.130.165 and 1987 c 150 s 4 are each amended to read as follows:

Where an order for payment of a fine is made as a result of a hearing under RCW 18.130.100 or 18.130.190 and timely payment is not made as directed in the final order, the disciplining authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the disciplining authority may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under RCW 18.130.140.

In any action for enforcement of an order of payment of a fine, the disciplining authority's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment.

**Sec. 21.** RCW 18.130.050 and 1987 c 150 s 2 are each amended to read as follows:

The disciplining authority has the following authority:

- (1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;
- (2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;
- (3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;
- (4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;
- (5) To compel attendance of witnesses at hearings;
- (6) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the disciplining authority;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the disciplining authority shall make the final decision regarding disposition of the license;

(9) To use individual members of the boards to direct investigations. However, the member of the board shall not subsequently participate in the hearing of the case;

(10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(11) To contract with licensees or other persons or organizations to provide services necessary for the monitoring and supervision of licensees who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter;

(14) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(15) To designate individuals authorized to sign subpoenas and statements of charges;

(16) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

(17) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a licensee's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3).

**Sec. 22.** RCW 18.130.180 and 1991 c 332 s 34 and 1991 c 215 c 3 are each reenacted and amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act

constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority; or

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding;

(9) Failure to comply with an order issued by the ~~((disciplining))~~ disciplinary authority or ~~((an assurance of discontinuance))~~ a stipulation for informal disposition entered into with the ~~((disciplining))~~ disciplinary authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;



(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards.

**NEW SECTION.** Sec. 23. The following acts or parts of acts are each repealed:

(1) RCW 18.135.080 and 1991 c 3 s 277 & 1984 c 281 s 8;

(2) RCW 18.64.260 and 1987 c 202 s 184, 1969 ex.s. c 199 s 17, 1909 c 213 s 9, & 1899 c 121 s 17; and

(3) RCW 18.71A.070 and 1990 c 196 s 7, 1979 c 158 s 58, & 1975 1st ex.s. c 190 s 3.

Passed the Senate April 24, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 368

[Senate Bill 5977]

### INITIATIVE AND REFERENDUM PETITIONS—LIMITS ON ACCEPTANCE ON BASIS OF STATISTICAL METHOD

Effective Date: 7/1/93

AN ACT Relating to the verification of initiative and referendum petitions; amending RCW 29.79.200; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 29.79.200 and 1982 c 116 s 15 are each amended to read as follows:

Upon the filing of an initiative or referendum petition, the secretary of state shall proceed to verify and canvass the names of the legal voters on the petition. The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed measure so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court of Thurston county. The secretary of state may limit the number of observers to not less than two on each side, if in his or her opinion, a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. The secretary of state may use any statistical sampling techniques for this verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW. No petition will be rejected on the basis of any statistical method employed, and no petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains (~~less than one hundred ten percent of~~) fewer than the requisite number of signatures of legal voters. If the secretary of state finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature. For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a certificate of the facts relating to the filing, verification, and canvass of the petition.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 21, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 369

[Senate Bill 5984]

### BLIND PERSONS—EXPENDITURE OF FUNDS IN BUSINESS ENTERPRISES REVOLVING ACCOUNT

Effective Date: 7/25/93

AN ACT Relating to the department of services for the blind; and amending RCW 74.18.230. Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 74.18.230 and 1991 sp.s. c 13 ss 19, 116 are each amended to read as follows:

(1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises revolving fund. Net proceeds, for purposes of this section, means the gross amount received less the costs of the operation, including a fair minimum return to the vending machine owner, which return shall not exceed a reasonable amount to be determined by the department.

(3) All federal moneys in the business enterprises revolving ~~((fund))~~ account shall be expended only for development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving ~~((fund))~~ account and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act.

~~(((5) Vocational rehabilitation funds may be spent in connection with the business enterprises program for training persons to become licensees and for other services that are required to complete an individual written rehabilitation program.))~~

Passed the Senate April 14, 1993.

Passed the House April 18, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 370**

[Substitute House Bill 1006]

**PUBLIC-PRIVATE TRANSPORTATION INITIATIVES****Effective Date:** 7/1/93

AN ACT Relating to public-private initiatives in transportation; adding a new chapter to Title 47 RCW; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds and declares:

It is essential for the economic, social, and environmental well-being of the state and the maintenance of a high quality of life that the people of the state have an efficient transportation system.

The ability of the state to provide an efficient transportation system will be enhanced by a public-private sector program providing for private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction or improvement, operation, and maintenance of transportation systems and facility projects.

A public-private initiatives program will provide benefits to both the public and private sectors. Public-private initiatives provide a sound economic investment opportunity for the private sector. Such initiatives will provide the state with increased access to property development and project opportunities, financial and development expertise, and will supplement state transportation revenues, allowing the state to use its limited resources for other needed projects.

The public-private initiatives program, to the fullest extent possible, should encourage and promote business and employment opportunities for Washington state citizens.

The public-private initiatives program should be implemented in cooperation and consultation with affected local jurisdictions.

The secretary of transportation should be permitted and encouraged to test the feasibility of building privately funded transportation systems and facilities or segments thereof through the use of innovative agreements with the private sector. The secretary of transportation should be vested with the authority to solicit, evaluate, negotiate, and administer public-private agreements with the private sector relating to the planning, construction, upgrading, or reconstruction of transportation systems and facilities.

The department of transportation should be encouraged to take advantage of new opportunities provided by federal legislation under section 1012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). That section establishes a new program authorizing federal participation in construction or improvement or improvement of publicly or privately owned toll roads, bridges, and tunnels, and allows states to leverage available federal funds as a means for attracting private sector capital.

**NEW SECTION. Sec. 2.** As used in this chapter, "transportation systems and facilities" means capital-related improvements and additions to the state's transportation infrastructure, including but not limited to highways, roads, bridges, vehicles, and equipment, marine-related facilities, vehicles, and equipment, park and ride lots, transit stations and equipment, transportation management systems, and other transportation-related investments.

**NEW SECTION. Sec. 3.** The secretary or a designee shall solicit proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the department and other public entities, all or a portion of the study, planning, design, construction, operation, and maintenance of transportation systems and facilities, using in whole or in part private sources of financing.

The public-private initiative program may develop up to six demonstration projects. Each proposal shall be weighed on its own merits, and each of the six agreements shall be negotiated individually, and as a stand-alone project. The commission shall approve each of the selected projects.

Proposals and demonstration projects may be selected by the public and private sectors at their discretion. All projects designed, constructed, and operated under this authority must comply with all applicable rules and statutes in existence at the time the agreement is executed, including but not limited to the following provisions: Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

The secretary or a designee shall consult with legal, financial, and other experts within and outside state government in the negotiation and development of the agreements.

**NEW SECTION. Sec. 4.** Agreements shall provide for private ownership of the projects during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement shall provide for state ownership of the transportation systems and facilities and lease to the private entity unless the state elects to provide for ownership of the facility by the private entity during the term of the agreement.

The state shall lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this chapter. Agreements for maintenance services entered into under this section shall provide for full reimbursement for services rendered by the department or other state agencies. Agreements for police services under the agreement may be entered into with any qualified law enforcement agency, and shall provide for full reimbursement for services rendered by that agency. The department may provide services for which it is reimbursed, including but not limited to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

The plans and specifications for each project constructed under this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity is deemed to be a part of the state highway system for purposes of identification, maintenance, and enforcement of traffic laws and for the purposes of applicable sections of this title. Upon reversion of the facility to the state, the project must meet all applicable state standards. Agreements shall address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable state standards upon reversion of the facility to the state.

For the purpose of facilitating these projects and to assist the private entity in the financing, development, construction, and operation of the transportation systems and facilities, the agreements may include provisions for the department to exercise its authority, including the lease of facilities, rights of way, and airspace, exercise of the power of eminent domain, granting of development rights and opportunities, granting of necessary easements and rights of access, issuance of permits and other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, authority to negotiate acquisition of rights of way in excess of appraised value, and any other provision deemed necessary by the secretary.

The agreements entered into under this section may include provisions authorizing the state to grant necessary easements and lease to a private entity existing rights of way or rights of way subsequently acquired with public or private financing. The agreements may also include provisions to lease to the entity airspace above or below the right of way associated or to be associated with the private entity's transportation facility. In consideration for the reversion rights in these privately constructed facilities, the department may negotiate a charge for the lease of airspace rights during the term of the agreement for a period not to exceed fifty years. If, after the expiration of this period, the department continues to lease these airspace rights to the private entity, it shall do so only at fair market value. The agreement may also provide the private entity the right of first refusal to undertake projects utilizing airspace owned by the state in the vicinity of the public-private project.

Agreements under this section may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build, install, operate, enforce laws, and maintain toll highways, bridges, and tunnels and which will not unreasonably inhibit or prohibit the development of additional public transportation systems and facilities. Agreements under this section must secure and maintain liability insurance coverage in amounts appropriate to protect the project's viability and may address state indemnification of the private entity for design and construction liability where the state has approved relevant design and construction plans. Nothing in this chapter limits the right of the secretary and his or her agents to

render such advice and to make such recommendations as they deem to be in the best interests of the state and the public.

**NEW SECTION.** Sec. 5. The department may enter into agreements using federal, state, and local financing in connection with the projects, including without limitation, grants, loans, and other measures authorized by section 1012 of ISTEA, and to do such things as necessary and desirable to maximize the funding and financing, including the formation of a revolving loan fund to implement this section.

Agreements entered into under this section shall authorize the private entity to lease the facilities within a designated area or areas from the state and to impose user fees or tolls within the designated area to allow a reasonable rate of return on investment, as established through a negotiated agreement between the state and the private entity. The negotiated agreement shall determine a maximum rate of return on investment, based on project characteristics. If the negotiated rate of return on investment is not affected, the private entity may establish and modify toll rates and user fees.

Agreements may establish "incentive" rates of return beyond the negotiated maximum rate of return on investment. The incentive rates of return shall be designed to provide financial benefits to the affected public jurisdictions and the private entity, given the attainment of various safety, performance, or transportation demand management goals. The incentive rates of return shall be negotiated in the agreement.

Agreements shall require that over the term of the ownership or lease the user fees or toll revenues be applied to payment of the private entity's capital outlay costs for the project, including interest expense, the costs associated with operations, toll collection, maintenance and administration of the facility, reimbursement to the state for the costs of project review and oversight, technical and law enforcement services, establishment of a fund to assure the adequacy of maintenance expenditures, and a reasonable return on investment to the private entity. The use of any excess toll revenues or user fees may be negotiated between the parties.

After expiration of the lease of a facility to a private entity, the secretary may continue to charge user fees or tolls for the use of the facility, with these revenues to be used for operations and maintenance of the facility, or to be paid to the local transportation planning agency, or any combination of such uses.

**NEW SECTION.** Sec. 6. Sections 1 through 5 of this act constitute a new chapter in Title 47 RCW.

**NEW SECTION.** Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 371

[Engrossed House Bill 1175]

### AMERICAN INDIAN CULTURE, HISTORY, AND LANGUAGE STUDIES

**Effective Date:** 7/25/93 - Except Section 2 which becomes effective on 9/1/2000 if certain conditions are met

AN ACT Relating to education; amending RCW 28A.150.220, 28A.150.220, and 28A.600.060; reenacting and amending RCW 28A.230.090; and providing a contingent effective date.

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

**Sec. 1.** RCW 28A.150.220 and 1990 c 33 s 105 are each amended to read as follows:

(1) For the purposes of this section and RCW 28A.150.250 and 28A.150.260:

(a) The term "total program hour offering" shall mean those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time actually spent for meals.

(b) "Instruction in work skills" shall include instruction in one or more of the following areas: Industrial arts, home and family life education, business and office education, distributive education, agricultural education, health occupations education, vocational education, trade and industrial education, technical education and career education.

(2) Satisfaction of the basic education goal identified in RCW 28A.150.210 shall be considered to be implemented by the following program requirements:

(a) Each school district shall make available to students in kindergarten at least a total program offering of four hundred fifty hours. The program shall include reading, arithmetic, language skills and such other subjects and such activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such program;

(b) Each school district shall make available to students in grades one through three, at least a total program hour offering of two thousand seven hundred hours. A minimum of ninety-five percent of the total program hour offerings shall be in the basic skills areas of reading/language arts (which may include ~~((foreign))~~ languages other than English, including American Indian languages), mathematics, social studies, science, music, art, health and physical education. The remaining five percent of the total program hour offerings may



include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades;

(c) Each school district shall make available to students in grades four through six at least a total program hour offering of two thousand nine hundred seventy hours. A minimum of ninety percent of the total program hour offerings shall be in the basic skills areas of reading/language arts (which may include ~~((foreign))~~ languages other than English, including American Indian languages), mathematics, social studies, science, music, art, health and physical education. The remaining ten percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades;

(d) Each school district shall make available to students in grades seven through eight, at least a total program hour offering of one thousand nine hundred eighty hours. A minimum of eighty-five percent of the total program hour offerings shall be in the basic skills areas of reading/language arts (which may include ~~((foreign))~~ languages other than English, including American Indian languages), mathematics, social studies, science, music, art, health and physical education. A minimum of ten percent of the total program hour offerings shall be in the area of work skills. The remaining five percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades;

(e) Each school district shall make available to students in grades nine through twelve at least a total program hour offering of four thousand three hundred twenty hours. A minimum of sixty percent of the total program hour offerings shall be in the basic skills areas of language arts, ~~((foreign))~~ languages other than English, which may be American Indian languages, mathematics, social studies, science, music, art, health and physical education. A minimum of twenty percent of the total program hour offerings shall be in the area of work skills. The remaining twenty percent of the total program hour offerings may include traffic safety or such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades, with not less than one-half thereof in basic skills and/or work skills: PROVIDED, That each school district shall have the option of including grade nine within the program hour offering requirements of grades seven and eight so long as such requirements for grades seven through nine are increased to two thousand nine hundred seventy hours and such requirements for grades ten through twelve are decreased to three thousand two hundred forty hours.

(3) In order to provide flexibility to the local school districts in the setting of their curricula, and in order to maintain the intent of this legislation, which is to stress the instruction of basic skills and work skills, any local school district may establish minimum course mix percentages that deviate by up to five percentage points above or below those minimums required by subsection (2) of this section, so long as the total program hour requirement is still met.

(4) Nothing contained in subsection (2) of this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten: PROVIDED, That effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(6) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish: PROVIDED, That each school district board of directors shall establish the basis and means for determining and monitoring the district's compliance with the basic skills and work skills percentage and course requirements of this section. The certification of the board of directors and the superintendent of a school district that the district is in compliance with such basic skills and work skills requirements may be accepted by the superintendent of public instruction and the state board of education.

(7) Handicapped education programs, vocational-technical institute programs, state institution and state residential school programs, all of which programs are conducted for the common school age, kindergarten through secondary school program students encompassed by this section, shall be exempt from the basic skills and work skills percentage and course requirements of this section in order that the unique needs, abilities or limitations of such students may be met.

(8) Any school district may petition the state board of education for a reduction in the total program hour offering requirements for one or more of the grade level groupings specified in this section. The state board of education shall grant all such petitions that are accompanied by an assurance that the minimum total program hour offering requirements in one or more other grade level groupings will be exceeded concurrently by no less than the number of hours of the reduction.

Sec. 2. RCW 28A.150.220 and 1992 c 141 s 503 are each amended to read as follows:

(1) Satisfaction of the basic education program requirements identified in RCW 28A.150.210 shall be considered to be implemented by the following program:

(a) Each school district shall make available to students enrolled in kindergarten at least a total instructional offering of four hundred fifty hours. The program shall include instruction in the essential academic learning requirements under RCW 28A.630.885 and such other subjects and such activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such program;

(b) Each school district shall make available to students enrolled in grades one through twelve, at least a district-wide annual average total instructional hour offering of one thousand hours. The state board of education may define alternatives to classroom instructional time for students in grades nine through twelve enrolled in alternative learning experiences. The state board of education shall establish rules to determine annual average instructional hours for districts including fewer than twelve grades. The program shall include the essential academic learning requirements under RCW 28A.630.885 and such other subjects and such activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such group;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages.

(2) Nothing contained in subsection (1) of this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(3) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten: PROVIDED, That effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(4) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish.

**Sec. 3.** RCW 28A.230.090 and 1992 c 141 s 402 and 1992 c 60 s 1 are each reenacted and amended to read as follows:

(1) The state board of education shall establish high school graduation requirements or equivalencies for students. Any course in Washington state history and government used to fulfill high school graduation requirements is encouraged to include information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(2) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(3) Pursuant to any (~~foreign language~~) requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district (~~foreign language~~) graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit. Subsection (4) of this section shall also apply to students enrolled in high school on April 11, 1990, who took the courses before attending high school.

**Sec. 4.** RCW 28A.600.060 and 1991 c 116 s 22 are each amended to read as follows:

The recipients of the Washington state honors awards shall be selected based on student achievement in both verbal and quantitative areas, as measured by a test or tests of general achievement selected by the superintendent of public instruction, and shall include student performance in the academic core areas of English, mathematics, science, social studies, and (~~foreign~~) languages other than English, which may be American Indian languages. The performance level in such academic core subjects shall be determined by grade point averages,

numbers of credits earned, and courses enrolled in during the beginning of the senior year.

**NEW SECTION. Sec. 5.** Section 2 of this act shall take effect September 1, 2000. However, section 2 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place.

Passed the House April 25, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 372

[House Bill 2048]

### AMERICAN INDIAN SCHOLARSHIP PROGRAM—CONDITIONAL GIFTS

Effective Date: 7/25/93

AN ACT Relating to American Indian scholarships; and amending RCW 28B.108.060 and 28B.108.070.

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

**Sec. 1.** RCW 28B.108.060 and 1991 sp.s. c 13 s 110 are each amended to read as follows:

The American Indian scholarship endowment fund is established. The endowment fund shall be administered by the state treasurer.

(1) Moneys received from the higher education coordinating board, private donations, state matching moneys, and funds received from any other source may be deposited into the endowment fund. Private moneys received as a gift subject to conditions may be deposited into the fund.

(2) At the request of the higher education coordinating board, the treasurer shall release earnings from the endowment fund to the board for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) When notified by the higher education coordinating board or by court order that a condition attached to a gift of private moneys in the fund has failed, the treasurer shall release those moneys to the donors according to the terms of the conditional gift.

(4) The principal of the endowment fund shall not be invaded. The release of moneys under subsection (3) of this section shall not constitute an invasion of corpus.

(5) The earnings on the fund shall be used solely for the purposes set forth in RCW 28B.108.040, except when the terms of a conditional gift of private moneys in the fund require that a portion of earnings on such moneys be reinvested in the fund.

**Sec. 2.** RCW 28B.108.070 and 1991 c 228 s 12 are each amended to read as follows:

The higher education coordinating board may request that the treasurer deposit fifty thousand dollars of state matching funds into the American Indian scholarship endowment fund when the board can match the state funds with an equal amount of private cash donations, including conditional gifts. Private cash donations means moneys from nonstate sources that include, but are not limited to, federal moneys, tribal moneys, and assessments by commodity commissions authorized to conduct research activities, including but not limited to research studies authorized under RCW 15.66.030 and 15.65.040.

Passed the House March 9, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 373

[Engrossed Substitute House Bill 1198]

### JUVENILE ISSUES TASK FORCE RECOMMENDATIONS—IMPLEMENTATION

Effective Date: 7/25/93

AN ACT Relating to recommendations of the juvenile issues task force; amending RCW 13.40.020; and adding a new section to chapter 13.40 RCW.

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

**Sec. 1.** RCW 13.40.020 and 1990 1st ex.s. c 12 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Serious offender" means a person fifteen years of age or older who has committed an offense which if committed by an adult would be:

(a) A class A felony, or an attempt to commit a class A felony;

(b) Manslaughter in the first degree; or

(c) Assault in the second degree, extortion in the first degree, child molestation in the second degree, kidnapping in the second degree, robbery in the second degree, residential burglary, or burglary in the second degree, where such offenses include the infliction of bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator is armed with a deadly weapon or firearm as defined in RCW 9A.04.110;

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community service may be performed through public or private organizations or through work crews;

(3) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department. A community supervision order for a single offense may be for a period of up to two years for a sex

offense as defined by RCW 9.94A.030 and up to one year for other offenses ~~((and))~~. Community supervision is an individualized program comprised of one or more of the following:

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(4) Community-based sanctions may include one or more of the following:

(a) A fine, not to exceed one hundred dollars;

(b) Community service not to exceed one hundred fifty hours of service;

~~((e))~~ (5) "Community-based rehabilitation" means one or more of the following: Attendance of information classes;

~~((d) Counseling; or~~

~~(e) Such other services to the extent funds are available for such services;))~~ counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;

(6) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions(-) or limitations as the court may require which may not include confinement;

~~((4))~~ (7) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court and may be served in a detention group home, detention foster home, or with electronic monitoring. Detention group homes and detention foster homes used for confinement shall not also be used for the placement of dependent children. Confinement in detention group homes and detention foster homes and electronic monitoring are subject to available funds;

~~((5))~~ (8) "Court", when used without further qualification, means the juvenile court judge(s) or commissioner(s);

~~((6))~~ (9) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only

the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history;

~~((7))~~ (10) "Department" means the department of social and health services;

~~((8))~~ (11) "Detention facility" means a county facility for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order;

(12) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person or entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW ~~((13.04.040, as now or hereafter amended,))~~ 13.40.080, or any person or entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter;

~~((9))~~ (13) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

~~((10))~~ (14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court;

~~((11))~~ (15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

~~((12))~~ (16) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

~~((13))~~ (17) "Middle offender" means a person who has committed an offense and who is neither a minor or first offender nor a serious offender;

~~((14))~~ (18) "Minor or first offender" means a person sixteen years of age or younger whose current offense(s) and criminal history fall entirely within one of the following categories:

- (a) Four misdemeanors;
- (b) Two misdemeanors and one gross misdemeanor;
- (c) One misdemeanor and two gross misdemeanors;
- (d) Three gross misdemeanors;
- (e) One class C felony except manslaughter in the second degree and one misdemeanor or gross misdemeanor;

(f) One class B felony except: Any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; assault in the second degree; extortion in the first degree; indecent liberties; kidnapping in the second



degree; robbery in the second degree; burglary in the second degree; residential burglary; vehicular homicide; or arson in the second degree.

For purposes of this definition, current violations shall be counted as misdemeanors;

~~((15))~~ (19) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

~~((16))~~ (20) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

~~((17))~~ (21) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expense incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense if the offense is a sex offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

~~((18))~~ (22) "Secretary" means the secretary of the department of social and health services;

~~((19))~~ (23) "Services" mean services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

~~((20))~~ (24) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

~~((21))~~ (25) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

~~((22))~~ (26) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

~~((23))~~ (27) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration.

**NEW SECTION. Sec. 2.** A new section is added to chapter 13.40 RCW to read as follows:

The department shall within existing funds collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter . . ., Laws of 1993 (section 1 of this act). Beginning December 1, 1993, the department shall report annually to the legislature on economic, gender, geographic, or racial disproportionality

in the rates of arrest, detention, trial, treatment, and disposition in the state's juvenile justice system. The report shall cover the preceding calendar year. The annual report shall identify the causes of such disproportionality and shall specifically point out any economic, gender, geographic, or racial disproportionality resulting from implementation of section 1, chapter . . . , Laws of 1993 (section 1 of this act).

**NEW SECTION. Sec. 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 374

[Engrossed House Bill 1228]

### JUVENILE JUSTICE OR CARE AGENCY REDEFINED

Effective Date: 7/25/93

AN ACT Relating to the definition of a juvenile justice or care agency; and amending RCW 13.50.010.

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

**Sec. 1.** RCW 13.50.010 and 1990 c 246 s 8 are each amended to read as follows:

(1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the department of social and health services and its contracting agencies, schools; and, in addition, persons or public or private agencies having children committed to their custody;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Social file" means the juvenile court file containing the records and reports of the probation counselor;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court, upon proof presented, to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to insure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment, or to individuals or agencies engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(11). Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the juvenile disposition standards commission under RCW 13.40.025 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

Passed the House March 9, 1993.

Passed the Senate April 18, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 375

[House Bill 1244]

### WORKERS' COMPENSATION—PAYMENT FOR TIME LOST TO ATTEND MEDICAL EXAMINATION

Effective Date: 7/25/93

AN ACT Relating to payments for time lost from work while attending a medical examination for industrial insurance; and amending RCW 51.32.110.

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

**Sec. 1.** RCW 51.32.110 and 1980 c 14 s 11 are each amended to read as follows:

(1) Any worker entitled to receive any benefits or claiming such under this title shall, if requested by the department or self-insurer, submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the worker and as may be provided by the rules of the department.

(2) If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That the department or the self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section.

(3) If the worker necessarily incurs traveling expenses in attending ~~((for))~~ the examination pursuant to the request of the department, such traveling

expenses shall be repaid to him or her out of the accident fund upon proper voucher and audit or shall be repaid by the self-insurer, as the case may be.

(4)(a) If the medical examination required by this section causes the worker to be absent from his or her work without pay ((he or she shall be paid for such time lost in accordance with the schedule of payments provided in RCW 51.32.090 as amended)):

(i) In the case of a worker insured by the department, the worker shall be paid compensation out of the accident fund in an amount equal to his or her usual wages for the time lost from work while attending the medical examination; or

(ii) In the case of a worker of a self-insurer, the self-insurer shall pay the worker an amount equal to his or her usual wages for the time lost from work while attending the medical examination.

(b) This subsection (4) shall apply prospectively to all claims regardless of the date of injury.

Passed the House March 11, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 376

[Substitute House Bill 1350]

### COMMERCIAL SHRIMP FISHING LICENSES

Effective Date: 1/1/94

AN ACT Relating to commercial shrimp fishing licenses; amending RCW 75.28.125 and 75.30.050; adding new sections to chapter 75.28 RCW; adding a new section to chapter 75.30 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The legislature finds that the offshore Washington, Oregon, and California commercial ocean pink shrimp fishery is composed of a mobile fleet, fishing the entire coast from Washington to California and landing its catch in the state nearest the area being fished. The legislature further finds that the ocean pink shrimp fishery currently uses the entire available resource, and has the potential to become overcapitalized. The legislature further finds that overcapitalization can lead to economic destabilization, and that reductions in fishing opportunities from licensing restrictions imposed for conservation needs and the economic well-being of the ocean pink shrimp industry creates uncertainty. The legislature further finds that it is the best interest of the ocean pink shrimp resource, commercial ocean pink shrimp fishers, and ocean pink shrimp processors in the state, to limit the number of fishers who make landings of ocean pink shrimp into the state of Washington to

those persons who have historically and continuously participated in the ocean pink shrimp fishery.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, as used in this chapter "ocean pink shrimp" means the species *Pandalus jordani*.

**Sec. 3.** RCW 75.28.125 and 1989 c 316 s 7 are each amended to read as follows:

A delivery license is required to deliver shellfish other than ocean pink shrimp or food fish other than salmon taken in offshore waters and delivered to a port in the state. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is fifty dollars for residents and one hundred dollars for nonresidents. Licenses issued under RCW 75.28.113 (salmon delivery license), RCW 75.28.130(4) (crab pot, other than Puget Sound), ~~((or))~~ RCW 75.28.140(2) (trawl, other than Puget Sound), section 4 of this act (ocean pink shrimp delivery), or section 8 of this act (ocean pink shrimp single delivery) shall include a delivery license.

**NEW SECTION. Sec. 4.** An ocean pink shrimp delivery license is required to deliver ocean pink shrimp taken in offshore waters and delivered to a port in the state. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. Ocean pink shrimp delivery licenses are transferable.

**NEW SECTION. Sec. 5.** After December 31, 1993, it is unlawful to deliver into any Washington state port ocean pink shrimp caught in offshore waters without an ocean pink shrimp delivery license issued under section 4 of this act, or an ocean pink shrimp single delivery license issued under section 8 of this act. An ocean pink shrimp delivery license shall be issued to a vessel that:

(1) Landed a total of at least five thousand pounds of ocean pink shrimp in Washington in any single calendar year between January 1, 1983, and December 31, 1992, as documented by a valid shellfish receiving ticket; and

(2) Can show continuous participation in the Washington, Oregon, or California ocean pink shrimp fishery by being eligible to land ocean pink shrimp in either Washington, Oregon, or California each year since the landing made under subsection (1) of this section. Evidence of such eligibility shall be a certified statement from the relevant state licensing agency that the applicant for a Washington ocean pink shrimp delivery license held at least one of the following permits:

(a) For Washington: Possession of a delivery permit or delivery license issued under RCW 75.28.125 or a trawl license (other than Puget Sound) issued under RCW 75.28.140;

(b) For Oregon: Possession of a vessel permit issued under Oregon Revised Statute 508.880; or

(c) For California: A trawl permit issued under California Fish and Game Code sec. 8842.

**NEW SECTION. Sec. 6.** An applicant who can show historical participation under section 5(1) of this act but does not satisfy the continuous participation requirement of section 5(2) of this act shall be issued an ocean pink shrimp delivery license if:

(1) The owner can prove that the owner was in the process on December 31, 1992, of constructing a vessel for the purpose of ocean pink shrimp harvest. For purposes of this section, "construction" means having the keel laid, and "for the purpose of ocean pink shrimp harvest" means the vessel is designed as a trawl vessel. An ocean pink shrimp delivery license issued to a vessel under construction is not renewable after December 31, 1994, unless the vessel lands a total of at least five thousand pounds of ocean pink shrimp into a Washington state port before December 31, 1994; or

(2) The applicant's vessel is a replacement for a vessel that is otherwise eligible for an ocean pink shrimp delivery license.

**NEW SECTION. Sec. 7.** After December 31, 1994, an ocean pink shrimp delivery license may only be issued to a vessel that held an ocean pink shrimp delivery license in 1994, and each year thereafter. If the license is transferred to another vessel, the license history shall also be transferred to the transferee vessel.

Where the failure to hold the license in any given year was the result of a license suspension, the vessel may qualify if the vessel held an ocean pink shrimp delivery license in the year immediately preceding the year of the license suspension.

**NEW SECTION. Sec. 8.** The owner of an ocean pink shrimp fishing vessel that does not qualify for an ocean pink shrimp delivery license issued under section 4 of this act shall obtain an ocean pink shrimp single delivery license in order to make a landing into a state port of ocean pink shrimp taken in offshore waters. The director shall not issue an ocean pink shrimp single delivery license unless, as determined by the director, a bona fide emergency exists. A maximum of six ocean pink shrimp single delivery licenses may be issued annually to any vessel. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the fee for an ocean pink shrimp single delivery license is one hundred dollars.

**Sec. 9.** RCW 75.30.050 and 1990 c 61 s 3 are each amended to read as follows:

(1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) The salmon charter boat fishing industry in cases involving salmon charter boat licenses or angler permits;

(b) The commercial salmon fishing industry in cases involving commercial salmon licenses;

(c) The commercial crab fishing industry in cases involving Puget Sound crab license endorsements;

(d) The commercial herring fishery in cases involving herring validations;

(e) The commercial Puget Sound whiting fishery in cases involving Puget Sound whiting license endorsements;

(f) The commercial sea urchin fishery in cases involving sea urchin endorsements to shellfish diver licenses; ~~(and)~~

(g) The commercial sea cucumber fishery in cases involving sea cucumber endorsements to shellfish diver licenses; and

(h) The commercial ocean pink shrimp industry (*Pandalus jordani*) in cases involving ocean pink shrimp delivery licenses.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

**NEW SECTION. Sec. 10.** A new section is added to chapter 75.30 RCW to read as follows:

The director may reduce the landing requirements established under section 5 of this act upon the recommendation of an advisory review board established under RCW 75.30.050, but the director may not entirely waive the landing requirement. The advisory review board may recommend a reduction of the landing requirement in individual cases if in the board's judgment, extenuating circumstances prevented achievement of the landing requirement. The director shall adopt rules governing the operation of the advisory review board and defining "extenuating circumstances."

***\*NEW SECTION. Sec. 11. Sections 2 and 4 through 8 of this act are each added to chapter 75.28 RCW.***

*\*Sec. 11 was vetoed, see message at end of chapter.*

**NEW SECTION. Sec. 12.** This act shall take effect January 1, 1994.

Passed the House March 13, 1993.

Passed the Senate April 21, 1993.

Approved by the Governor May 15, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 11 of Substitute House Bill No. 1350, entitled:

"AN ACT Relating to commercial shrimp fishing licenses."

Section 11 requires Sections 2 and 4 through 8 of this act to be codified in the Commercial Fishing chapter (75.28 RCW) of the Revised Code of Washington. However a number of these sections should be codified in the License Limitation chapter (75.30 RCW) of the Revised Code of Washington. I am therefore vetoing Section 11 and directing the Code Reviser to codify sections 2 and 4 in chapter 75.28 RCW and sections 5 through 8 in chapter 75.30 RCW.

With the exception of section 11, Substitute House Bill No. 1350 is approved."



## CHAPTER 377

[Substitute House Bill 1367]

## MANDATORY ELECTION RECOUNTS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to mandatory election recounts; and amending RCW 29.64.015.

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

**Sec. 1.** RCW 29.64.015 and 1991 c 90 s 2 are each amended to read as follows:

(1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is not more than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position which appears on the ballot in more than one county, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) ~~(Whenever)~~ If the difference in the number of votes cast for ~~(such candidates is)~~ the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29.64.020, 29.64.030, and 29.64.040. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system.

Passed the House March 9, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

**CHAPTER 378**

[Substitute House Bill 1370]

**PUBLIC WORKS BIDS—NAMING OF SUBCONTRACTORS REQUIRED**

**Effective Date: 7/25/93**

AN ACT Relating to public works subletting and subcontracting; adding a new section to Title 39 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 Title 39 RCW to read as follows:

Every invitation to bid on a contract that is expected to cost in excess of one hundred thousand dollars for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010, an institution of higher education as defined under RCW 28B.10.016, or a school district shall require each bidder to submit as part of the bid, or within twenty-four hours of the bid, the names of the subcontractors whose subcontract amount is more than ten percent of the contract price with whom the bidder, if awarded the contract, will subcontract for performance of the categories of work designated on the list to be submitted with the bid or to indicate by naming itself that a category of work on the list shall not be subcontracted. Failure to name such subcontractors or itself shall render the bidder's bid nonresponsive and, therefore, void.

NEW SECTION. **Sec. 2.** This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after the effective date of this act.

Passed the House March 9, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

**CHAPTER 379**

[Engrossed Substitute House Bill 1509]

**HIGHER EDUCATION INSTITUTIONS—INCREASED FLEXIBILITY  
TO MANAGE LOCALLY**

**Effective Date: 7/1/93**

AN ACT Relating to increasing flexibility of institutions of higher education to manage personnel, construction, purchasing, printing, and tuition; amending RCW 43.19.190, 43.19.1906, 43.78.030, 43.78.100, 43.78.110, 28B.50.330, 28B.10.350, 28B.10.355, 39.04.020, 39.04.150, 28B.15.031, 28B.15.202, 28B.15.402, 28B.15.502, 41.58.020, 28B.16.040, 41.06.070, 28B.16.200, and 41.06.280; reenacting and amending RCW 41.56.030; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 43.78 RCW; adding a new section to chapter 28B.15 RCW; adding new sections to chapter 41.56 RCW; adding a new section to chapter 41.06 RCW; adding a

new section to chapter 28B.16 RCW; creating new sections; repealing RCW 28B.15.824; making an appropriation; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. The legislature acknowledges the academic freedom of institutions of higher education, and seeks to improve their efficiency and effectiveness in carrying out their missions. By this act, the legislature intends to increase the flexibility of institutions of higher education to manage personnel, construction, purchasing, printing, and tuition.

## PART I

### PURCHASING, PRINTING, AND CONSTRUCTION AUTHORITY

**NEW SECTION.** Sec. 101. A new section is added to chapter 28B.10 RCW to read as follows:

(1) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education. Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.550 through 43.19.637. The community and technical colleges shall comply with RCW 43.19.450. Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.1935, 43.19.19363, and 43.19.19368. If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637. Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the

public printer. Thereafter the public printer shall not be required to provide those services for that institution.

**Sec. 102.** RCW 43.19.190 and 1991 c 238 s 135 are each amended to read as follows:

The director of general administration, through the state purchasing and material control director, shall:

(1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: PROVIDED, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by said legislature: PROVIDED, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: PROVIDED FURTHER, That universities operating hospitals and the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital ~~((service))~~ group purchasing organizations ~~((as defined in section 501(e) of the Internal Revenue Code, or its successor))~~: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935 ~~((as now or hereafter amended))~~: PROVIDED FURTHER, That, except for the authority of the risk manager to purchase insurance and bonds, the director is not required to provide purchasing services for institutions of higher education that choose to exercise independent purchasing authority under section 101 of this act;

(3) Provide the required staff assistance for the state supply management advisory board through the division of purchasing;

(4) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to

specific types of material, equipment, services, and supplies: PROVIDED, That acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, (~~as now or hereafter amended,~~) or from policies established by the director after consultation with the state supply management advisory board: PROVIDED FURTHER, That delegation of such authorization to a state agency, including an educational institution to which this section applies, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(5) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(6) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(7) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(8) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(9) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications after receiving the recommendation of the supply management advisory board;

(10) Provide for the maintenance of inventory records of supplies, materials, and other property;

(11) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(12) Publish procedures and guidelines for compliance by all state agencies, including those educational institutions to which this section applies, which implement overall state purchasing and material control policies;

(13) Conduct periodic visits to state agencies, including those educational institutions to which this section applies, to determine if statutory provisions and supporting purchasing and material control policies are being fully implemented, and based upon such visits, take corrective action to achieve compliance with established purchasing and material control policies under existing statutes when required.

**Sec. 103.** RCW 43.19.1906 and 1992 c 85 s 1 are each amended to read as follows:

Insofar as practicable, all purchases and sales shall be based on competitive bids, and a formal sealed bid procedure shall be used as standard procedure for all purchases and contracts for purchases and sales executed by the state purchasing and material control director and under the powers granted by RCW 43.19.190 through 43.19.1939(~~as now or hereafter amended~~). This requirement also applies to purchases and contracts for purchases and sales executed by

agencies, including educational institutions, under delegated authority granted in accordance with provisions of RCW 43.19.190 (~~as now or hereafter amended~~) or under section 101 of this act. However, formal sealed bidding is not necessary for:

(1) Emergency purchases made pursuant to RCW 43.19.200 if the sealed bidding procedure would prevent or hinder the emergency from being met appropriately;

(2) Purchases not exceeding five thousand dollars, or subsequent limits as calculated by the office of financial management: PROVIDED, That the state director of general administration shall establish procedures to assure that purchases made by or on behalf of the various state agencies shall not be made so as to avoid the five thousand dollar bid limitation, or subsequent bid limitations as calculated by the office of financial management: PROVIDED FURTHER, That the state purchasing and material control director is authorized to reduce the formal sealed bid limits of five thousand dollars, or subsequent limits as calculated by the office of financial management, to a lower dollar amount for purchases by individual state agencies(~~(, including purchases of specialized equipment, instructional, and research equipment and materials by colleges and universities,))~~) if considered necessary to maintain full disclosure of competitive procurement or otherwise to achieve overall state efficiency and economy in purchasing and material control. Quotations from four hundred dollars to five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be secured from enough vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry. A record of competition for all such purchases from four hundred dollars to five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be documented for audit purposes on a standard state form approved by the forms management center under the provisions of RCW 43.19.510. Purchases up to four hundred dollars may be made without competitive bids based on buyer experience and knowledge of the market in achieving maximum quality at minimum cost: PROVIDED, That this four hundred dollar direct buy limit without competitive bids may be increased incrementally as required to a maximum of eight hundred dollars with the approval of at least ten of the members of the state supply management advisory board, if warranted by increases in purchasing costs due to inflationary trends;

(3) Purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation;

(4) Purchases of insurance and bonds by the risk management office under RCW 43.19.1935 (~~as now or hereafter amended~~);

(5) Purchases and contracts for vocational rehabilitation clients of the department of social and health services: PROVIDED, That this exemption is effective only when the state purchasing and material control director, after consultation with the director of the division of vocational rehabilitation and appropriate department of social and health services procurement personnel, declares that such purchases may be best executed through direct negotiation with one or more suppliers in order to expeditiously meet the special needs of the state's vocational rehabilitation clients;

(6) Purchases by universities for hospital operation or biomedical teaching or research purposes and by the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, made by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital ((service)) group purchasing organizations ((as defined in section 501(c) of the Internal Revenue Code, or its successor));

(7) Purchases by institutions of higher education not exceeding fifteen thousand dollars (~~((that are funded by research grant or contract funds, or other nonstate appropriated funds))~~): PROVIDED, That for purchases between two thousand five hundred dollars and fifteen thousand dollars quotations shall be secured from enough vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. A record of competition for all such purchases made from two thousand five hundred to fifteen thousand dollars shall be documented for audit purposes (~~((on a standard state form approved by the forms management center under provisions of RCW 43.19.510))~~); and

(8) Beginning on July 1, ~~((1989))~~ 1995, and on July 1 of each succeeding odd-numbered year, the ~~((five thousand))~~ dollar limits specified in ~~((subsection (2) of))~~ this section shall be adjusted as follows: The office of financial management shall calculate such limits by adjusting the previous biennium's limits by the appropriate federal inflationary index reflecting the rate of inflation for the previous biennium. Such amounts shall be rounded to the nearest one hundred dollars.

**Sec. 104.** RCW 43.78.030 and 1988 c 102 s 1 are each amended to read as follows:

The public printer shall print and bind the session laws, the journals of the two houses of the legislature, all bills, resolutions, documents, and other printing and binding of either the senate or house, as the same may be ordered by the legislature; and such forms, blanks, record books, and printing and binding of every description as may be ordered by all state officers, boards, commissions, and institutions, and the supreme court, and the court of appeals and officers thereof, as the same may be ordered on requisition, from time to time, by the proper authorities. This section shall not apply to the printing of the supreme

court and the court of appeals reports, ~~((or))~~ to the printing of bond certificates or bond offering disclosure documents, or to any printing done or contracted for by institutions of higher education: PROVIDED, That institutions of higher education, in consultation with the public printer, develop vendor selection procedures comparable to those used by the public printer for contracted printing jobs. Where any institution or institution of higher learning of the state is or may become equipped with facilities for doing such work, it may do any printing: (1) For itself, or (2) for any other state institution when such printing is done as part of a course of study relative to the profession of printer. Any printing and binding of whatever description as may be needed by any ~~((institution of higher learning,))~~ institution or agency of the state department of social and health services not at Olympia, or the supreme court or the court of appeals or any officer thereof, the estimated cost of which shall not exceed one thousand dollars, may be done by any private printing company in the general vicinity within the state of Washington so ordering, if in the judgment of the officer of the agency so ordering, the saving in time and processing justifies the award to such local private printing concern. ~~((Further, where any printing or binding needed by an institution of higher education is to be paid for from research grant or contract funds, short course revenues, or other nonstate appropriated funding source, such printing or binding may be done by any private printing company in the state of Washington, irrespective of the dollar limit specified in this section, when in the judgment of the officer of the institution so ordering, the saving in time or cost justifies the award to such local private printing concern.))~~

Beginning on July 1, 1989, and on July 1 of each succeeding odd-numbered year, the dollar limit specified in this section shall be adjusted as follows: The office of financial management shall calculate such limit by adjusting the previous biennium's limit by an appropriate federal inflationary index reflecting the rate of inflation for the previous biennium. Such amounts shall be rounded to the nearest fifty dollars.

NEW SECTION. Sec. 105. A new section is added to chapter 43.78 RCW to read as follows:

The public printer may use the state printing plant for the purposes of printing or furnishing materials under RCW 43.78.100 if an interlocal agreement under chapter 39.34 RCW has been executed between an institution of higher education and the public printer.

Sec. 106. RCW 43.78.100 and 1965 c 8 s 43.78.100 are each amended to read as follows:

The public printer shall furnish all paper, stock, and binding materials required in all public work, and shall charge the same to the state, as it is actually used, at the actual price at which it was purchased plus five percent for waste, insurance, storage, and handling. This section does not apply to institutions of higher education.



**Sec. 107.** RCW 43.78.110 and 1982 c 164 s 3 are each amended to read as follows:

Whenever in the judgment of the public printer certain printing, ruling, binding, or supplies can be secured from private sources more economically than by doing the work or preparing the supplies in the state printing plant, ~~((he))~~ the public printer may obtain such work or supplies from such private sources. ~~((The public printer shall notify day training centers, group training homes, and sheltered workshops providing printing and related trade services under RCW 43.19.532 of the opportunity to bid on the provision of such work or supplies under this section.))~~

In event any work or supplies are secured on behalf of the state under this section the state printing plant shall be entitled to add up to five percent to the cost thereof to cover the handling of the orders which shall be added to the bills and charged to the respective authorities ordering the work or supplies. The five percent handling charge shall not apply to contracts with institutions of higher education.

**Sec. 108.** RCW 28B.50.330 and 1991 c 238 s 48 are each amended to read as follows:

The boards of trustees of college districts are empowered in accordance with the provisions of this chapter to provide for the construction, reconstruction, erection, equipping, demolition, and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances for the use of the aforementioned colleges as authorized by the college board in accordance with RCW 28B.50.140; to be financed by bonds payable out of special funds from revenues hereafter derived from income received from such facilities, gifts, bequests, or grants, and such additional funds as the legislature may provide, and payable out of a bond retirement fund to be established by the respective district boards in accordance with rules and regulations of the state board. With respect to building, improvements, or repairs, or other work, where the estimated cost exceeds ~~((fifteen))~~ twenty-five thousand dollars, complete plans and specifications for such work shall be prepared ~~((and such work shall be prepared))~~ and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: PROVIDED, That when such building, construction, renovation, remodeling, or demolition involves one trade or craft area and the estimated cost exceeds ten thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids, and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications. This subsection shall not apply when a contract is awarded by the small works procedure authorized in RCW 39.04.150: PROVIDED FURTHER, That any project regardless of dollar amount may be put to public bid.

Where the estimated cost to any college of any building, improvements, or repairs, or other work, is less than ~~((five))~~ twenty-five thousand dollars, the

publication requirements of RCW 39.04.020 (~~and 39.04.070~~) shall be inapplicable.

**Sec. 109.** RCW 28B.10.350 and 1985 c 152 s 1 are each amended to read as follows:

(1) When the cost to The Evergreen State College, any regional university, or state university, of any building, construction, renovation, remodeling, or demolition other than maintenance or repairs will equal or exceed the sum of twenty-five thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: **PROVIDED**, That when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of twenty-five thousand dollars, such project shall be deemed a public works and "the prevailing rate of wage," under chapter 39.12 RCW shall be applicable thereto: **PROVIDED FURTHER**, That when such building, construction, renovation, remodeling, or demolition involves one trade or craft area and the estimated cost exceeds ten thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids, and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications. This subsection shall not apply when a contract is awarded by the small works procedure authorized in RCW 28B.10.355.

(2) The Evergreen State College, any regional university, or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section.

(3) Where the estimated cost to The Evergreen State College, any regional university, or state university of any building, construction, renovation, remodeling, or demolition is less than twenty-five thousand dollars or the contract is awarded by the small works procedure authorized in RCW 28B.10.355, the publication requirements of RCW 39.04.020 (~~and 39.04.090~~) shall be inapplicable.

(4) In the event of any emergency when the public interest or property of The Evergreen State College, regional university, or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of such an emergency and reciting the facts constituting the same may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency: **PROVIDED**, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of such college or university in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

**Sec. 110.** RCW 28B.10.355 and 1985 c 152 s 2 are each amended to read as follows:

Each board of regents of the state universities and each board of trustees of the regional universities and The Evergreen State College may establish a small works roster. The small works roster authorized by this section may be used for any public works project for which the estimated cost is less than ~~((fifty))~~ one hundred thousand dollars. Each board shall adopt rules to implement this section.

The roster shall be composed of all responsible contractors who have requested to be on the list. Each board shall establish a procedure for securing telephone or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. This procedure shall require either that a good faith effort be made to request quotations from all contractors on the small works roster who have indicated the capability of performing the kind of public works being contracted or that the board shall solicit quotations from at least five contractors in a manner that will equitably distribute the opportunity among contractors on the roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection and available by telephone inquiry. Each board may adopt a procedure to prequalify contractors for inclusion on the small works roster. No board may be required to make available for public inspection or copying under chapter 42.17 RCW financial information required to be provided by the prequalification procedure.

The small works roster shall be revised at least once each year by publishing notice of such opportunity in at least one newspaper of general circulation in the state. Responsible contractors shall be added to the list at any time they submit a written request.

**Sec. 111.** RCW 39.04.020 and 1986 c 282 s 2 are each amended to read as follows:

Whenever the state(;;) or any municipality shall determine that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency having by law the authority to require such work to be done. The plans, specifications, and estimates of cost shall be approved by the director, supervisor, commissioner, trustee, board, or agency and the original draft or a certified copy filed in such office before further action is taken.

If the state(;;) or such municipality shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of fifteen thousand dollars or the amounts specified in RCW 28B.10.350 or 28B.10.355 for colleges and universities, or the amounts specified in RCW 28B.50.330 or 39.04.150 for community colleges and technical colleges, then the

state or such municipality shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done: PROVIDED, That when any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work.

**Sec. 112.** RCW 39.04.150 and 1988 c 36 s 12 are each amended to read as follows:

(1) As used in this section, "agency" means the department of general administration, the department of fisheries, the department of wildlife, and the state parks and recreation commission.

(2) In addition to any other power or authority that an agency may have, each agency, alone or in concert, may establish a small works roster consisting of all qualified contractors who have requested to be included on the roster.

(3) The small works roster may make distinctions between contractors based on the geographic areas served and the nature of the work the contractor is qualified to perform. At least once every year, the agency shall advertise in a newspaper of general circulation the existence of the small works roster and shall add to the roster those contractors who request to be included on the roster.

(4) Construction, repair, or alteration projects estimated to cost less than fifty thousand dollars, or less than one hundred thousand dollars for projects managed by the department of general administration for community colleges and technical colleges, as defined under chapter 28B.50 RCW, are exempt from the requirement that the contracts be awarded after advertisement and competitive bid as defined by RCW 39.04.010. In lieu of advertisement and competitive bid, the agency shall solicit at least five quotations, confirmed in writing, from contractors chosen by random number generated by computer from the contractors on the small works roster for the category of job type involved and shall award the work to the party with the lowest quotation or reject all quotations. If the agency is unable to solicit quotations from five qualified contractors on the small works roster for a particular project, then the project shall be advertised and competitively bid. The agency shall solicit quotations randomly from contractors on the small works roster in a manner which will equitably distribute the opportunity for these contracts among contractors on the roster: PROVIDED, That whenever possible, the agency shall invite at least one proposal from a minority contractor who shall otherwise qualify to perform such work. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone request.

(5) The breaking down of any public work or improvement into units or accomplishing any public work or improvement by phases for the purpose of

avoiding the minimum dollar amount for bidding is contrary to public policy and is prohibited.

(6) The director of general administration shall adopt by rule a procedure to prequalify contractors for inclusion on the small works roster. Each agency shall follow the procedure adopted by the director of general administration. No agency shall be required to make available for public inspection or copying under chapter 42.17 RCW financial information required to be provided by the prequalification procedure.

(7) An agency may adopt by rule procedures to implement this section which shall not be inconsistent with the procedures adopted by the director of the department of general administration pursuant to subsection (6) of this section.

## PART II LOCAL TUITION AUTHORITY

**Sec. 201.** RCW 28B.15.031 and 1987 c 15 s 2 are each amended to read as follows:

The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall be ~~((transmitted to the state treasurer within thirty five days of receipt to be deposited in the state general fund))~~ deposited in a local account containing only operating fees revenue and related interest; PROVIDED, That two and one-half percent of ~~((moneys received as))~~ operating fees ~~((be exempt from such deposit and))~~ shall be retained by the institutions, except the technical colleges, for the purposes of RCW 28B.15.820~~((= PROVIDED FURTHER, That money received by institutions of higher education from the periodic payment plan authorized by RCW 28B.15.411 shall be transmitted to the state treasurer within five days following the close of registration of the appropriate quarter or semester))~~.

**Sec. 202.** RCW 28B.15.202 and 1992 c 231 s 7 are each amended to read as follows:

Tuition fees and maximum services and activities fees at the University of Washington and at Washington State University for other than the summer term shall be as follows:

(1) For full time resident undergraduate students and all other full time resident students not in graduate study programs or enrolled in programs leading to the degrees of doctor of medicine, doctor of dental surgery, and doctor of veterinary medicine, the total tuition fees shall be thirty-three percent of the per student undergraduate educational costs at the state universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be one hundred and twenty dollars. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(2) For full time resident graduate and law students not enrolled in programs leading to the degrees of doctor of medicine, doctor of dental surgery, and doctor of veterinary medicine, the total tuition fees shall be twenty-three percent of the per student graduate educational costs at the state universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be one hundred and twenty dollars. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(3) For full time resident students enrolled in programs leading to the degrees of doctor of medicine, doctor of dental surgery, and doctor of veterinary medicine, the total tuition fees shall be one hundred sixty-seven percent of such fees charged in subsection (2) of this section: PROVIDED, That the building fees for each academic year shall be three hundred and forty-two dollars. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(4) For full time nonresident undergraduate students and such other full time nonresident students not in graduate study programs or enrolled in programs leading to the degrees of doctor of medicine, doctor of dental surgery, or doctor of veterinary medicine, the total tuition fees shall be one hundred percent of the per student undergraduate educational costs at the state universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be three hundred and fifty-four dollars. Beginning with the 1995-96 academic year the building fee for each academic

year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(5) For full time nonresident graduate and law students not enrolled in programs leading to the degrees of doctor of medicine, doctor of dental surgery, and doctor of veterinary medicine, the total tuition fees shall be sixty percent of the per student graduate educational costs at the state universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be three hundred and fifty-four dollars. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(6) For full time nonresident students enrolled in programs leading to the degrees of doctor of medicine, doctor of dental surgery, and doctor of veterinary medicine, the total tuition fees shall be one hundred sixty-seven percent of such fees charged in subsection (5) of this section: PROVIDED, That the building fees for each academic year shall be five hundred and fifty-five dollars. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(7) The governing boards of the state universities shall charge to and collect from each student, a services and activities fee. The governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in resident undergraduate tuition fees: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

**Sec. 203.** RCW 28B.15.402 and 1992 c 231 s 10 are each amended to read as follows:

Tuition fees and maximum services and activities fees at the regional universities and The Evergreen State College for other than the summer term shall be as follows:

(1) For full time resident undergraduate students and all other full time resident students not in graduate study programs, the total tuition fees shall be twenty-five percent of the per student undergraduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be seventy-six

dollars and fifty cents. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(2) For full time resident graduate students, the total tuition fees shall be twenty-three percent of the per student graduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be seventy-six dollars and fifty cents. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(3) For full time nonresident undergraduate students and all other full time nonresident students not in graduate study programs, the total tuition fees shall be one hundred percent of the per student undergraduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be two hundred and ninety-five dollars and fifty cents. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(4) For full time nonresident graduate students, the total tuition fees shall be seventy-five percent of the per student graduate educational costs at the regional universities computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be two hundred and ninety-five dollars and fifty cents. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(5) The governing boards of each of the regional universities and The Evergreen State College shall charge to and collect from each student, a services and activities fee. The governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in resident undergraduate tuition fees: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

**Sec. 204.** RCW 28B.15.502 and 1992 c 231 s 11 are each amended to read as follows:



Tuition fees and maximum services and activities fees at each community college for other than the summer term shall be set by the state board for community and technical colleges as follows:

(1) For full time resident students, the total tuition fees shall be twenty-three percent of the per student educational costs at the community colleges computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be one hundred and twenty-seven dollars and fifty cents. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(2) For full time nonresident students, the total tuition fees shall be one hundred percent of the per student educational costs at the community colleges computed as provided in RCW 28B.15.067 and 28B.15.070: PROVIDED, That the building fees for each academic year shall be four hundred and three dollars and fifty cents. Beginning with the 1995-96 academic year the building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition in the 1994-95 academic year, rounded up to the nearest half percent.

(3) The governing boards of each of the state community colleges shall charge to and collect from each student a services and activities fee. Each governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in resident student tuition fees: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(4) Tuition and services and activities fees consistent with subsection (3) of this section shall be set by the state board for community and technical colleges for summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

Subject to the limitations of RCW 28B.15.910, each governing board may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules and regulations of the state board for community and technical colleges.

Before June 30, 1995, no individual waiver program under this section may be reduced by more than twice the percentage reduction required in operating fee foregone revenue from tuition waivers in the biennial state appropriations act.

**NEW SECTION. Sec. 205.** A new section is added to chapter 28B.15 RCW to read as follows:

It is the intent of the legislature that:

In making appropriations from the state's general fund to institutions of higher education, each appropriation shall conform to the following:

(1) The appropriation shall be reduced by the amount of operating fees revenue estimated to be collected from students enrolled at the state-funded enrollment level specified in the omnibus biennial operating appropriations act and the estimated interest on operating fees revenue, minus obligations under RCW 28B.15.820 and 43.991.040 and minus the amount of waived operating fees authorized under RCW 28B.15.910;

(2) The appropriation shall not be reduced by the amount of operating fees revenue collected from students enrolled above the state-funded level, but within the over-enrollment limitations, specified in the omnibus biennial operating appropriations act; and

(3) The general fund state appropriation shall not be reduced by the amount of operating fees revenue collected as a result of waiving less operating fees revenue than the amounts authorized under RCW 28B.15.910.

NEW SECTION. Sec. 206. RCW 28B.15.824 and 1992 c 231 s 36 are each repealed.

### PART III EMPLOYMENT RELATIONS

NEW SECTION. Sec. 301. A new section is added to chapter 41.56 RCW to read as follows:

In addition to the entities listed in RCW 41.56.020, this chapter shall apply to institutions of higher education with respect to the employees included in a bargaining unit that has exercised the option specified in section 304 of this act.

Sec. 302. RCW 41.56.030 and 1992 c 36 s 2 and 1991 c 363 s 119 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter (~~as designated by RCW 41.56.020~~), or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution

for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. In the case of the Washington state patrol, "collective bargaining" shall not include wages and wage-related matters.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means (a) law enforcement officers as defined in RCW 41.26.030 as now or hereafter amended, of cities with a population of fifteen thousand or more or law enforcement officers employed by the governing body of any county with a population of seventy thousand or more, or (b) fire fighters as that term is defined in RCW 41.26.030, as now or hereafter amended.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

**Sec. 303.** RCW 41.58.020 and 1975 1st ex.s. c 296 s 4 are each amended to read as follows:

(1) It shall be the duty of the commission, in order to prevent or minimize interruptions growing out of labor disputes, to assist employers and employees to settle such disputes through mediation and fact-finding.

(2) The commission, through the director, may proffer its services in any labor dispute ~~((involving a political subdivision, municipal corporation, or the community college system of the state))~~ arising under a collective bargaining statute administered by the commission, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial disruption to the public welfare.

(3) If the director is not able to bring the parties to agreement by mediation within a reasonable time, ~~((he))~~ the director shall seek to induce the parties to voluntarily seek other means of settling the dispute without resort to strike or other coercion, including submission to the employees in the bargaining unit of

the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the director shall not be deemed a violation of any duty or obligation imposed by this chapter.

(4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The commission is directed to make its mediation and fact-finding services available in the settlement of such grievance disputes only as a last resort.

**NEW SECTION. Sec. 304.** A new section is added to chapter 41.56 RCW to read as follows:

(1) At any time after July 1, 1993, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under chapter 28B.16 or 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of this chapter by complying with the following:

(a) The parties will file notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement permitted by this section recognizing the notice of intent. The parties shall provide the notice to the higher education personnel board or its successor and the commission;

(b) During the negotiation of an initial contract between the parties under this chapter, the parties' scope of bargaining shall be governed by this chapter and any disputes arising out of the collective bargaining rights and obligations under this subsection shall be determined by the commission. If the commission finds that the parties are at impasse, the notice filed under (a) of this subsection shall be void and have no effect; and

(c) On the first day of the month following the month during which the institution of higher education and the exclusive bargaining representative provide notice to the higher education personnel board or its successor and the commission that they have executed an initial collective bargaining agreement recognizing the notice of intent filed under (a) of this subsection, chapter 28B.16 or 41.06 RCW as appropriate shall cease to apply to all employees in the bargaining unit covered by the agreement.

(2) All collective bargaining rights and obligations concerning relations between an institution of higher education and the exclusive bargaining representative of its employees who have agreed to exercise the option permitted by this section shall be determined under this chapter, subject to the following:

(a) The commission shall recognize, in its current form, the bargaining unit as certified by the higher education personnel board or its successor and the limitations on collective bargaining contained in RCW 41.56.100 shall not apply to that bargaining unit.

(b) If, on the date of filing the notice under subsection (1)(a) of this section, there is a union shop authorized for the bargaining unit under rules adopted by the higher education personnel board or its successor, the union shop requirement

shall continue in effect for the bargaining unit and shall be deemed incorporated into the collective bargaining agreement applicable to the bargaining unit.

(c) Salary increases negotiated for the employees in the bargaining unit shall be subject to the following:

(i) Salary increases shall continue to be appropriated by the legislature. The exclusive bargaining representative shall meet before a legislative session with the governor or governor's designee and the representative of the institution of higher education concerning the total dollar amount for salary increases and health care contributions that will be contained in the appropriations proposed by the governor under RCW 43.88.060;

(ii) The collective bargaining agreements may provide for salary increases from local efficiency savings that are different from or that exceed the amount or percentage for salary increases provided by the legislature in the omnibus appropriations act for the institution of higher education or allocated to the board of trustees by the state board for community and technical colleges, but the base for salary increases provided by the legislature under (c)(i) of this subsection shall include only those amounts appropriated by the legislature, and the base shall not include any additional salary increases provided under this subsection (2)(c)(ii);

(iii) Any provisions of the collective bargaining agreements pertaining to salary increases provided under (c)(i) of this subsection shall be subject to modification by the legislature. If any provision of a salary increase provided under (c)(i) of this subsection is changed by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the modified provision.

(3) Nothing in this section may be construed to permit an institution of higher education to bargain collectively with an exclusive bargaining representative concerning any matter covered by: (a) Chapter 41.05 RCW, except for the related cost or dollar contributions or additional or supplemental benefits as permitted by chapter . . . (Engrossed Second Substitute Senate Bill No. 5304), Laws of 1993; or (b) chapter 41.32 or 41.40 RCW.

**Sec. 305.** RCW 28B.16.040 and 1990 c 60 s 201 are each amended to read as follows:

The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(1) Members of the governing board of each institution and related boards, all presidents, vice presidents and their confidential secretaries, administrative and personal assistants; deans, directors, and ~~((chairmen))~~ chairpersons; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial

responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington.

(2) Student, part time, or temporary employees, and part time professional consultants, as defined by the higher education personnel board, employed by institutions of higher education and related boards.

(3) The director, ~~((his))~~ the director's confidential secretary, assistant directors, and professional education employees of the state board for community and technical colleges ~~((education))~~.

(4) The personnel director of the higher education personnel board and ~~((his))~~ the director's confidential secretary.

(5) The governing board of each institution, and related boards, may also exempt from this chapter, subject to the employees right of appeal to the higher education personnel board, classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training, ~~((and principal assistants to executive heads of major administrative or academic divisions,))~~ as determined by the higher education personnel board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the higher education personnel board under this provision.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

**Sec. 306.** RCW 41.06.070 and 1993 c . . . (Engrossed Substitute House Bill No. 2054) s 21 are each amended to read as follows:

(1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, legislative budget committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

- (c) Officers, academic personnel, and employees of technical colleges;
- (d) The officers of the Washington state patrol;
- (e) Elective officers of the state;
- (f) The chief executive officer of each agency;
- (g) In the departments of employment security, fisheries, social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;
- (h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:
  - (i) All members of such boards, commissions, or committees;
  - (ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;
  - (iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;
  - (iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;
- (i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;
- (j) Assistant attorneys general;
- (k) Commissioned and enlisted personnel in the military service of the state;
- (l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;
- (m) The public printer or to any employees of or positions in the state printing plant;
- (n) Officers and employees of the Washington state fruit commission;
- (o) Officers and employees of the Washington state apple advertising commission;
- (p) Officers and employees of the Washington state dairy products commission;
- (q) Officers and employees of the Washington tree fruit research commission;
- (r) Officers and employees of the Washington state beef commission;
- (s) Officers and employees of any commission formed under chapter 15.66 RCW;

(t) Officers and employees of the state wheat commission formed under chapter 15.63 RCW;

(u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

(w) Liquor vendors appointed by the Washington state liquor control board pursuant to RCW 66.08.050: PROVIDED, HOWEVER, That rules adopted by the Washington personnel resources board pursuant to RCW 41.06.150 regarding the basis for, and procedures to be followed for, the dismissal, suspension, or demotion of an employee, and appeals therefrom shall be fully applicable to liquor vendors except those part time agency vendors employed by the liquor control board when, in addition to the sale of liquor for the state, they sell goods, wares, merchandise, or services as a self-sustaining private retail business;

(x) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(y) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(z) All employees of the marine employees' commission;

(aa) Up to a total of five senior staff positions of the western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection shall expire on June 30, 1997;

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice-presidents and their confidential secretaries, administrative and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is



physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) Student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board, employed by institutions of higher education and related boards;

(c) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training ~~((and principal assistants to executive heads of major administrative or academic divisions,))~~ as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(d) Printing craft employees in the department of printing at the University of Washington;

(3) In addition to the exemptions specifically provided by this chapter, the Washington personnel resources board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the Washington personnel resources board stating the reasons for requesting such exemptions. The Washington personnel resources board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the Washington personnel resources board shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor. The Washington personnel resources board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted under subsections (1) (x) and (y) and (2) of this section, together with the reasons for such exemptions.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1) (j) through (v) and (2) of this section, shall be determined by the Washington personnel resources board.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

**Sec. 307.** RCW 28B.16.200 and 1979 c 151 s 18 are each amended to read as follows:

(1) There is hereby created a fund within the state treasury, designated as the "higher education personnel board service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, the budget for which shall be subject to review and approval and appropriation by the legislature. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges ((education)) and credited to the higher education personnel board service fund as such allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will provide the board with funds to meet its anticipated expenditures during the allotment period.

(2) If employees cease to be classified under this chapter pursuant to an agreement authorized by section 304 of this act, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel board service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel board service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board based on the salaries and wages of the remaining employees classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature. The director of financial management shall report the amount and impact of any across-the-board reductions made under this section to the

appropriations committee of the house of representatives and the ways and means committee of the senate, or appropriate successor committees, within thirty days of making the reductions.

(3) Moneys from the higher education personnel board service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board.

NEW SECTION. Sec. 308. A new section is added to chapter 41.06 RCW to read as follows:

(1) There is hereby created a fund within the state treasury, designated as the "higher education personnel service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of institutions of higher education and related boards, the budget for which shall be subject to review and approval and appropriation by the legislature. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges and credited to the higher education personnel service fund as such allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will provide the board with funds to meet its anticipated expenditures during the allotment period.

(2) If employees of institutions of higher education cease to be classified under this chapter pursuant to an agreement authorized by section 304 of this act, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board for community and technical colleges based on the salaries and wages of the remaining employees of institutions of higher education and related boards classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature. The director of financial management shall report the amount and impact of any across-the-board reductions made under this section to the appropriations committee of the house of representatives and the ways and means committee of the senate, or appropriate successor committees, within thirty days of making the reductions.

(3) Moneys from the higher education personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board.

**Sec. 309.** RCW 41.06.280 and 1993 c . . . (Engrossed Substitute House Bill No. 2054) s 34 are each amended to read as follows:

There is hereby created a fund within the state treasury, designated as the "department of personnel service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the approved allotments of salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the department of personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the department with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.— and 41.06.— (sections 9 and 12, chapter . . . (Engrossed Substitute House Bill No. 2054), Laws of 1993).

The director of personnel shall fix the terms and charges for services rendered by the department of personnel pursuant to RCW 41.06.080, which amounts shall be credited to the department of personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a quarterly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a quarterly basis to the state treasurer and deposited by him in the department of personnel service fund.

Moneys from the department of personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board.

**NEW SECTION.** **Sec. 310.** A new section is added to chapter 28B.16 RCW to read as follows:

At any time after July 1, 1993, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under this chapter or chapter 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW, by filing notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement recognizing the notice of intent. The parties shall provide the notice to the board or its successor and the public employment relations commission. On the first day of the month following the month during which the institution of higher education and the exclusive bargaining representative provide notice to the board or its successor and the public employment relations commission that they have executed an initial collective bargaining agreement recognizing the notice of intent, this chapter shall cease to apply to all employees in the bargaining unit covered by the agreement, and all labor relations functions of the

board or its successor with respect to these employees shall be transferred to the public employment relations commission.

**PART IV**  
**MISCELLANEOUS**

**NEW SECTION. Sec. 401.** Section 305 of this act shall take effect if section 21 of Engrossed Substitute House Bill No. 2054 is not signed into law by June 30, 1993.

**NEW SECTION. Sec. 402.** Section 306 of this act shall take effect if section 21 of Engrossed Substitute House Bill No. 2054 is signed into law by June 30, 1993.

**NEW SECTION. Sec. 403.** Section 307 of this act shall take effect if section 68 of Engrossed Substitute House Bill No. 2054 is not signed into law by June 30, 1993.

**NEW SECTION. Sec. 404.** Section 308 of this act shall take effect if sections 34 and 68 of Engrossed Substitute House Bill No. 2054 are signed into law by June 30, 1993.

**NEW SECTION. Sec. 405.** Section 309 of this act shall take effect if section 34 of Engrossed Substitute House Bill No. 2054 is signed into law by June 30, 1993.

***\*NEW SECTION. Sec. 406. The sum of . . . . dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1995, from each public four-year institution's and the community colleges' operating fees account established in RCW 28B.15.824 to the respective institution's local account for the purposes of sections 201 through 205 of this act.***

*\*Sec. 406 was vetoed, see message at end of chapter.*

**NEW SECTION. Sec. 407.** 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. 408.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 15, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 406, Engrossed Substitute House Bill No. 1509 entitled:

"AN ACT Relating to increasing flexibility of institutions of higher education to manage personnel, construction, purchasing, printing, and tuition."

I am vetoing section 406 of Engrossed Substitute House Bill No. 1509 because of technical reasons. This section attempts to transfer operating funds remaining in institutional operating fee accounts at the end of 1991-93 in the treasurer's office to institutional local accounts. The section does not accomplish the transfer. However, Engrossed Substitute Senate Bill No. 5982 (the tuition increase legislation) does contain language that makes the transfer. Therefore, I am vetoing section 406 of Engrossed Substitute House Bill No. 1509.

With the exception of section 406, Engrossed Substitute House Bill No. 1509 is approved."

## CHAPTER 380

[Substitute House Bill 1520]

### SKILL CENTERS—AFTERNOON AND EVENING PROGRAMS FOR ADULTS

Effective Date: 7/25/93

AN ACT Relating to skill centers; and adding a new chapter to Title 28C RCW.

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

**NEW SECTION.** Sec. 1. As retraining becomes a common part of adult work life, it is important that all vocational education opportunities be used to the maximum extent possible. Skill centers established to provide vocational training for high school students are used during the morning and early afternoon. These facilities are idle during the late afternoon and evening hours. At the same time, community colleges have more students applying than they can accommodate. To assure that we meet the needs of our citizens in seeking training or retraining, all vocational training facilities should be used to the maximum extent possible.

**NEW SECTION.** Sec. 2. Skill centers, to the extent funds are available, are encouraged to operate afternoon and evening programs.

**NEW SECTION.** Sec. 3. The community colleges are encouraged to contract with skill centers to use the skill center facilities. The community colleges shall not be required to count the enrollments under these agreements toward the community college enrollment lid. Skill centers may charge fees to adult students under RCW 28A.225.220.

**NEW SECTION.** Sec. 4. Sections 1 through 3 of this act shall constitute a new chapter in Title 28C RCW.

Passed the House April 20, 1993.  
Passed the Senate April 12, 1993.  
Approved by the Governor May 15, 1993.  
Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 381**

[Engrossed House Bill 1617]

**HIGH-SPEED GROUND TRANSPORTATION PROGRAM**

**Effective Date: 7/1/93**

AN ACT Relating to high-speed ground transportation; creating new sections; providing an effective date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that major intercity transportation corridors in this state are becoming increasingly congested. In these corridors, population is expected to grow by nearly forty percent over the next twenty years, while employment will grow by nearly fifty percent. The estimated seventy-five percent increase in intercity travel demand must be accommodated to ensure state economic vitality and protect the state's quality of life.

The legislature finds that high-speed ground transportation offers a safer, more efficient, and environmentally responsible alternative to increasing highway capacity. High-speed ground transportation can complement and enhance existing air transportation systems. High-speed ground transportation can be compatible with growth management plans in counties and cities served by such a system. Further, high-speed ground transportation offers a reliable, all-weather service capable of significant energy savings over other intercity modes.

**NEW SECTION. Sec. 2.** The legislature finds that there is substantial public benefit to establishing a high-speed ground transportation program in this state. The program shall implement the recommendations of the high-speed ground transportation steering committee report dated October 15, 1992. The program shall be administered by the department of transportation in close cooperation with the utilities and transportation commission and affected cities and counties.

The high-speed ground transportation program shall have the following goals:

(1) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Portland, Oregon by 2020. This would be accomplished by meeting the intermediate objectives of a maximum travel time between downtown Portland and downtown Seattle of two hours and thirty minutes by the year 2000 and maximum travel time of two hours by the year 2010;

(2) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Vancouver, B.C. by 2025;

(3) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Seattle and Spokane by 2030.

The department of transportation shall, subject to legislative appropriation, implement such projects as necessary to achieve these goals in accordance with the implementation plans identified in sections 3 and 4 of this act.

**NEW SECTION.** Sec. 3. The legislature finds it important to develop public support and awareness of the benefits of high-speed ground transportation by developing high-quality intercity passenger rail service as a first step. This high-quality intercity passenger rail service shall be developed through incremental upgrading of the existing service. The department of transportation shall, subject to legislative appropriation, develop a prioritized list of projects to improve existing passenger rail service and begin new passenger rail service, to include but not be limited to:

(1) Improvement of depots;

(2) Improved grade crossing protection or grade crossing elimination;

(3) Enhanced train signals to improve rail corridor capacity and increase train speeds;

(4) Revised track geometry or additional trackage to improve ride quality and increase train speeds; and

(5) Contract for new or improved service in accordance with federal requirements to improve service frequency.

Service enhancements and station improvements must be based on the extent to which local comprehensive plans contribute to the viability of intercity passenger rail service, including providing efficient connections with other transportation modes such as transit, intercity bus, and roadway networks. Before spending state moneys on these projects, the department of transportation shall seek federal, local, and private funding participation to the greatest extent possible. Funding priorities for station improvements must also be based on the level of local and private in-kind and cash contributions.

**NEW SECTION.** Sec. 4. The legislature recognizes the need to plan for the high-speed ground transportation service and the high-quality intercity rail passenger service set forth in sections 2 and 3 of this act. The department of transportation shall, subject to legislative appropriation, develop a rail passenger plan through the conduct of studies addressing, but not limited to, the following areas:

(1) Refined ridership estimates;

(2) Preliminary location and environmental analysis on new corridors;

(3) Detailed station location assessments in concert with affected local jurisdictions;



(4) Coordination with the air transportation commission on state-wide air transportation policy and its effects on high-speed ground transportation service; and

(5) Coordination with the governments of Oregon and British Columbia, when appropriate, on alignment, station location, and environmental analysis.

**NEW SECTION.** **Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 17, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 382

[Substitute House Bill 1619]

### TASK FORCE ON INTERNATIONAL EDUCATION AND CULTURAL EXCHANGES

Effective Date: 7/25/93

AN ACT Relating to international education and cultural exchanges; creating new sections; and providing an expiration date.

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

**NEW SECTION.** **Sec. 1.** The Washington task force on international education and cultural exchanges is established. The task force shall be administered by the higher education coordinating board, with the assistance and support of the superintendent of public instruction, institutions of higher education, the department of trade and economic development, and other appropriate state agencies. The members of the task force may include but need not be limited to: Legislators; executives from business and agriculture; labor leaders; native American tribal representatives; officials from local government; regents and trustees; administrators from schools, community and technical colleges, colleges, and universities; faculty; and representatives from cultural and cultural exchange organizations. To the extent possible when selecting members for the task force, the board shall select members from diverse cultural backgrounds and shall strive to promote geographic balance.

**NEW SECTION.** **Sec. 2.** The purposes of the task force shall include but need not be limited to:

(1) Recommending policy, programs, and activities that will help to ensure that universities, colleges, community and technical colleges, and the common schools are providing all students with an education that includes an understanding of the languages, culture, traditions, history, and government of peoples of and from other lands and other indigenous cultures;

(2) Recommending ways to enhance and promote student, faculty, and cultural exchanges with people from other lands and other indigenous cultures and to provide every college student with an opportunity to study abroad or to study other cultures indigenous to this area;

(3) Recommending the desirability of integrating an international and multicultural perspective into courses in history, political science, education, sociology, business, and other academic programs;

(4) Recommending the feasibility of requiring coursework in the language and the culture, history, or government of another country or region, or of native American peoples, as a condition of graduation from a public school, college, or university;

(5) Recommending, as a condition of teacher certification, the desirability of requiring coursework in multicultural and international perspectives and understanding students from other lands and cultures;

(6) Completing and disseminating a survey of all Washington community and technical colleges, colleges, and universities that shall include but need not be limited to information on: The international and multicultural issues, relationships, and activities underway or contemplated at each institution; formal and informal relationships with institutions in other lands, or institutions serving native American peoples; the number of Washington's students studying abroad; and the number of international students enrolled in each institution of higher education;

(7) Gathering information on sister city and other formal and informal relationships between the state's local governments and cities, states, provinces, and regions in other lands and native American tribes;

(8) Recommending ways to enrich the experience of international students and students from other indigenous cultures at Washington's community and technical colleges, colleges, universities, and high schools;

(9) Identifying ways that international students and students from other indigenous cultures enrich the state's economy and the academic culture of the state's schools and colleges;

(10) Recommending ways to enhance the coordination of cultural exchange opportunities;

(11) Recommending collaborative structures and programs to facilitate the development and assessment of international and multicultural education and cultural exchanges; and

(12) Identifying private and public funding methods to ensure a sustained investment in international and multicultural education in Washington state.

NEW SECTION. Sec. 3. The board may accept gifts, grants, donations, devises, and bequests to facilitate the work of the task force.

NEW SECTION. Sec. 4. By December 30, 1993, with the assistance of the higher education coordinating board, the task force shall provide a preliminary report to the governor and the legislature. The report shall include recommenda-

tions of the task force for any legislation needed to facilitate its work and implement its findings and recommendations. By October 1, 1994, the board shall report additional findings and recommendations of the task force to the governor, the house of representatives and senate higher education committees, the superintendent of public instruction, and to the presidents of each college and university in the state.

**NEW SECTION. Sec. 5.** This act shall expire June 30, 1995.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 383

[House Bill 1648]

### VOTER REGISTRATION AFTER CLOSE OF NORMAL REGISTRATION

Effective Date: 7/25/93

AN ACT Relating to elections; amending RCW 29.07.160; and adding a new section to chapter 29.07 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 29.07 RCW to read as follows:

This section establishes a special procedure which an elector may use to register to vote during the period beginning after the closing of registration for voting at the polls under RCW 29.07.160 and ending on the fifteenth day before a primary, special election, or general election. During this period, the unregistered qualified elector may register to vote in person in the office of the county auditor or at a voter registration location specifically designated for this purpose by the county auditor of the county in which the applicant resides, and apply for an absentee ballot for that primary or election. The auditor or voter registrar shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form.

**Sec. 2.** RCW 29.07.160 and 1980 c 3 s 4 are each amended to read as follows:

The registration files of all precincts shall be closed against original registration or transfers for thirty days immediately preceding every primary, special election, and general election (~~and primary~~) to be held in such precincts(~~, respectively~~).

The county auditor shall give notice of the closing of (~~said~~) the precinct files for original registration and transfer and notice of the special registration

and voting procedure provided by section 1 of this act by one publication in a newspaper of general circulation in the county at least five days before ((such)) the closing((, except as provided for special elections in accordance with section 3 of this 1980 act)) of the precinct files.

No person may vote at any primary, special election, or general election in a precinct polling place unless he or she has registered to vote at least thirty days before that primary or election. If a person, otherwise qualified to vote in the state, county, and precinct in which he or she applies for registration, does not register at least thirty days before any primary, special election, or general election, he or she may register and vote by absentee ballot for that primary or election under section 1 of this act.

Passed the House March 16, 1993.

Passed the Senate April 21, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 384**

[House Bill 1713]

**VEHICULAR WINDOW TINTING LABELS**

**Effective Date: 7/25/93**

AN ACT Relating to tinted windows in motor vehicles; and amending RCW 46.37.430.

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

**Sec. 1.** RCW 46.37.430 and 1990 c 95 s 1 are each amended to read as follows:

(1) No person may sell any new motor vehicle as specified in this title, nor may any new motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type that meets or exceeds federal standards, or if there are none, standards approved by the Washington state patrol. The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he or she shall suspend the registration of

any motor vehicle so subject to this section which the director finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted by the state patrol wherever glazing materials are used in outside windows and doors.

(5) No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of film sunscreening material to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, plus or minus three percent, and a light transmission of thirty-five percent or more, plus or minus three percent, when measured against clear glass ~~((and))~~ resulting in a minimum of twenty-four percent light transmission on AS-2 glazing where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited. The same maximum levels of film sunscreen material may be applied to windows to the immediate right and left of the driver on limousines and passenger buses used to transport persons for compensation and vehicles identified by the manufacturer as multi-use, multipurpose, or other similar designation. All windows to the rear of the driver on such vehicles may have film sunscreening material applied that has less than thirty-five percent light transmittance, if the light reflectance is thirty-five percent or less and the vehicle is equipped with outside rearview mirrors on both the right and left. ~~((Manufacturers of film sunscreening material shall provide a label to affix to the vehicle indicating the percentage light transmittance and light reflectance of the film and it shall be affixed by the installer to the area immediately below the federal vehicle identification number sticker on the driver's side striker post. All vehicles equipped with film sunscreening material are required, on and after January 1, 1991, to meet the labeling requirements in this section. The label shall meet standards adopted by the state patrol.))~~ A person or business tinting windows for profit who tints windows within restricted areas of the glazing system shall supply a sticker to be affixed to the driver's door post, in the area adjacent to the manufacturer's identification tag. Installation of this sticker certifies that the glazing application meets this chapter's standards for light transmission, reflectance, and placement requirements. Stickers must be no smaller than three-quarters of an inch by one and one-half inches, and no larger than two inches by two and one-half inches. The stickers must be of sufficient quality to endure exposure to harsh climate conditions. The business name and state tax identification number of the installer must be clearly visible on the sticker.

(b) A greater degree of light reduction is permitted on all windows and the top six inches of windshields of a vehicle operated by or carrying as a passenger

a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

(c) Windshield application. A greater degree of light reduction is permitted on the top six-inch area of a vehicle's windshield. Clear film sunscreening material that reduces or eliminates ultraviolet light may be applied to windshields.

(d) When film sunscreening material is applied to any window except the windshield, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

(e) The following types of film sunscreening material are not permitted:

(i) Mirror finish products;

(ii) Red, gold, yellow, or black material; or

(iii) Film sunscreening material that is in liquid preapplication form and brushed or sprayed on.

Nothing in this section prohibits the use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet federal standards and the standards of the state patrol for such safety glazing materials.

(6) It is a traffic infraction for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with film sunscreening or coloring material in violation of this section.

(7) Owners of vehicles with film sunscreening material applied to windows to the rear of the driver, prior to June 7, 1990, must comply with the requirements of this section and RCW 46.37.435 by July 1, 1993.

Passed the House March 15, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 385**

[Engrossed House Bill 1748]

**FINANCIAL AID FOR COLLEGE STUDENTS—REVISIONS**

**Effective Date:** 7/25/93

AN ACT Relating to financial aid; and amending RCW 28B.15.820, 28B.101.040, and 28B.12.040.

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

**Sec. 1.** RCW 28B.15.820 and 1985 c 390 s 35 are each amended to read as follows:

(1) Each institution of higher education, except technical colleges, shall deposit two and one-half percent of revenues collected from tuition and services and activities fees in an institutional (~~long-term loan~~) financial aid fund (~~which~~) that is hereby created and which shall be held locally. Moneys in (~~such~~) the fund shall be used only for the following purposes: (a) To make guaranteed long-term loans to eligible students (except as provided for) as provided in subsections (3) through (8) of this section; (b) to make short-term loans as provided in subsection (9) of this section; or (c) to provide financial aid to needy students as provided in subsection (10) of this section.

(2) An "eligible student" for the purposes of subsections (3) through (8) and (10) of this section is a student registered for at least six credit hours or the equivalent, who is eligible for resident tuition and fee rates as defined in RCW 28B.15.012 through (~~28B.15.015~~) 28B.15.013, and who is a "needy student" as defined in RCW 28B.10.802.

(3) The amount of the guaranteed long-term loans made under (~~subsection (1) of~~) this section shall not exceed the demonstrated financial need of the student. Each institution shall establish loan terms and conditions which shall be consistent with the terms of the guaranteed loan program established by 20 U.S. Code Section 1071 et seq., as now or hereafter amended. All loans made shall be guaranteed by the Washington student loan guaranty association or its successor agency. Institutions are hereby granted full authority to operate as an eligible lender under the guaranteed loan program.

(4) Before approving a guaranteed long-term loan, each institution shall analyze the ability of the student to repay the loan based on factors which include, but are not limited to, the student's accumulated total education loan burdens and the employment opportunities and average starting salary characteristics of the student's chosen fields of study. The institution shall counsel the student on the advisability of acquiring additional debt, and on the availability of other forms of financial aid.

(5) Each institution is responsible for collection of guaranteed long-term loans made under (~~subsection (1) of~~) this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Institutions shall cooperate with other lenders and the Washington student loan guaranty association, or its successor agency, in the coordinated collection of guaranteed loans, and shall assure that the guarantability of the loans is not violated. Collection and servicing of guaranteed long-term loans under (~~subsection (1) of~~) this section shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency: PROVIDED, That institutions be permitted to perform such servicing if specifically recognized to do so by the Washington student loan guaranty association or its successor agency. Collection and servicing of guaranteed long-term loans made by community colleges under subsection (1) of this section shall be coordinated by the state board for

community and technical colleges (~~(education)~~) and shall be conducted under procedures adopted by ~~((such))~~ the state board.

(6) Receipts from payment of interest or principal or any other subsidies to which institutions as lenders are entitled, ~~((which))~~ that are paid by or on behalf of borrowers of funds under subsections ~~((1))~~ (3) through (8) of this section, shall be deposited in each institution's ~~((general loan))~~ financial aid fund and shall be used to cover the costs of making the guaranteed long-term loans under ~~((subsection (1) of))~~ this section and maintaining necessary records and making collections under subsection (5) of this section: PROVIDED, That such costs shall not exceed five percent of aggregate outstanding loan ~~((principal))~~ principal. Institutions shall maintain accurate records of such costs, and all receipts beyond those necessary to pay such costs, shall be ~~((used for the support of the institution's operating budget))~~ deposited in the institution's financial aid fund.

(7) The governing boards ~~((of regents))~~ of the state universities, ~~((the boards of trustees of))~~ the regional universities, and The Evergreen State College, and the state board for community and technical colleges (~~(education)~~), on behalf of the community colleges, shall each adopt necessary rules and regulations to implement this section.

(8) ~~((Lending activities))~~ First priority for any guaranteed long-term loans made under this section shall be directed toward students who would not normally have access to educational loans from private financial institutions in Washington state, and maximum use shall be made of secondary markets in the support of loan consolidation.

(9) Short-term ~~((interim))~~ loans, not to exceed one ~~((hundred twenty days))~~ year, may be made from the institutional ~~((long-term loan))~~ financial aid fund to students ~~((eligible for guaranteed student loans and whose receipt of such loans is pending. Such short-term loans shall not be subject to the guarantee restrictions or the constraints of federal law imposed by subsection (3) of this section))~~ enrolled in the institution. No such loan shall be made to any student who is known by the institution to be in default or delinquent in the payment of any outstanding student loan. A short-term loan may be made only if the institution has ample evidence that the student has the capability of repaying the loan within the time frame specified by the institution for repayment.

(10) Any moneys deposited in the institutional ~~((long-term loan))~~ financial aid fund ~~((which))~~ that are not used in making ~~((long))~~ long-term or short-term loans ~~((or transferred to institutional operating budgets))~~ may be used by the institution for locally-administered financial aid programs for needy students, such as need-based institutional employment programs or need-based tuition and fee ~~((waiver))~~ scholarship or grant programs. These funds shall be used in addition to and not to replace institutional funds ~~((which))~~ that would otherwise support these locally-administered financial aid programs. Priority in the use of these funds shall be given to needy students who have accumulated excessive educational loan burdens. An excessive educational loan burden is a burden that



will be difficult to repay given employment opportunities and average starting salaries in the student's chosen fields of study.

**Sec. 2.** RCW 28B.101.040 and 1990 c 288 s 6 are each amended to read as follows:

Grants may be used by eligible participants to attend any public or private college or university in the state of Washington that is accredited by an accrediting association recognized by rule of the higher education coordinating board and that has an existing unused capacity. Grants shall not be used to attend any branch campus or educational program established under chapter 28B.45 RCW. The participant shall not be eligible for a grant if it will be used for any programs that include religious worship, exercise, or instruction or to pursue a degree in theology. Each participating student may receive up to two thousand five hundred dollars per academic year, not to exceed the student's demonstrated financial need for the course of study.

**Sec. 3.** RCW 28B.12.040 and 1985 c 370 s 58 are each amended to read as follows:

The higher education coordinating board shall develop and administer the college work-study program and shall be authorized to enter into agreements with employers and eligible institutions for the operation of the program. These agreements shall include such provisions as the higher education coordinating board may deem necessary or appropriate to carry out the purposes of this chapter.

With the exception of off-campus community service placements, the share from ((funds)) moneys disbursed under the college work-study program of the compensation of students employed under such program in accordance with such agreements shall not exceed eighty percent of the total such compensation paid such students.

By rule, the board shall define community service placements and may determine any salary matching requirements for any community service employers.

Passed the House April 24, 1993.

Passed the Senate April 22, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 386

[Substitute House Bill 1784]

RETIRED AND DISABLED SCHOOL EMPLOYEES—HEALTH CARE  
INSURANCE THROUGH HEALTH CARE AUTHORITY

**Effective Date:** 7/25/93 - Except Sections 3, 7, & 11 which take effect on 10/1/93; & Sections 1, 2, 4 through 6, 8 through 10 & 12 through 16 which take effect on 5/15/93

AN ACT Relating to health care insurance for employees and retirees of school districts and educational service districts; amending RCW 28A.400.391, 41.04.205, 41.04.235, 41.05.011, 41.05.021, 41.05.050, 41.05.055, 41.05.065, 41.05.075, 41.05.080, and 41.05.140; adding a new section to chapter 28A.400 RCW; adding new sections to chapter 41.05 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** It is the legislature's intent to increase access to health insurance for retired and disabled school employees and also to improve equity between state employees and school employees by providing for the reduction of health insurance premiums charged to retired school employees through a subsidy charged against health insurance allocations for active employees. It is further the legislature's intent to improve the cost-effectiveness of state-purchased health care by managing programs for public employees, in this case retired school employees, through the state health care authority.

**Sec. 2.** RCW 28A.400.391 and 1992 c 152 s 1 are each amended to read as follows:

(1) Every group disability insurance policy, health care service contract, health maintenance agreement, and health and welfare benefit plan obtained or created to provide benefits to employees of school districts and their dependents shall contain provisions that permit retired and disabled employees to continue medical, dental, or vision coverage under the group policy, contract, agreement, or plan until (~~June 30, 1994~~) September 30, 1993, or until the employee becomes eligible for federal medicare coverage, whichever occurs first. The terms and conditions for election and maintenance of such continued coverage shall conform to the standards established under the federal consolidated omnibus budget reconciliation act of 1985, as amended. The period of continued coverage provided under this section shall run concurrently with any period of coverage guaranteed under the federal consolidated omnibus budget reconciliation act of 1985, as amended.

(2) This section applies to:

(a) School district employees who retired or lost insurance coverage due to disability after July 28, 1991;

(b) School district employees who retired or lost insurance coverage due to disability within the eighteen-month period ending on July 28, 1991; and

(c) School district employees who retired or lost insurance coverage due to disability prior to January 28, 1990, and who were covered by their employing district's insurance plan on January 1, 1991.

(3) For the purposes of this section "retired employee" means an employee who separates from district service and is eligible at the time of separation from

service to receive, immediately following separation from service, a retirement allowance under chapter 41.32 or 41.40 RCW.

(4) The superintendent of public instruction shall adopt administrative rules to implement this section.

**Sec. 3.** RCW 41.04.205 and 1992 c 199 s 1 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 41.04.180, the employees, with their dependents, of any county, municipality, or other political subdivision of this state shall be eligible to participate in any insurance or self-insurance program for employees administered under chapter 41.05 RCW if the legislative authority of any such county, municipality, or other political subdivisions of this state determines a transfer to an insurance or self-insurance program administered under chapter 41.05 RCW should be made. In the event of a special district employee transfer pursuant to this section, members of the governing authority shall be eligible to be included in such transfer if such members are authorized by law as of June 25, 1976 to participate in the insurance program being transferred from and subject to payment by such members of all costs of insurance for members.

(2) When the legislative authority of a county, municipality, or other political subdivision determines to so transfer, the state health care authority shall:

(a) Establish the conditions under which the transfer may be made, which shall include the requirements that:

(i) All the eligible employees of the political subdivision transfer as a unit, and

(ii) The political subdivision involved obligate itself to make employer contributions in an amount at least equal to those provided by the state as employer; and

(b) Hold public hearings on the application for transfer; and

(c) Have the sole right to reject the application.

Approval of the application by the state health care authority shall effect a transfer of the employees involved to the insurance, self-insurance, or health care program applied for.

(3) Any application of this section to members of the law enforcement officers' and fire fighters' retirement system under chapter 41.26 RCW is subject to chapter 41.56 RCW.

(4) The requirements in subsection (2)(a) (i) and (ii) of this section need not be applied to school districts, except that all eligible employees in a bargaining unit of a school district may transfer only as a unit and all nonrepresented employees in a district may transfer only as a unit.

**Sec. 4.** RCW 41.04.235 and 1983 c 3 s 89 are each amended to read as follows:

Participants in a health care benefit plan approved pursuant to RCW 41.04.180, (~~(41.05.025)~~) 41.05.065, or 28A.400.350, whichever is applicable, who are retired public employees, may authorize the deduction from their retirement allowances, of the amount or amounts of their subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance upon the approval by the retirement board of an application for such deduction on the prescribed form, and the treasurer of the state shall duly and timely draw and issue proper warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the amount authorized to be deducted.

**Sec. 5.** RCW 41.05.011 and 1990 c 222 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurance carrier as defined in chapter 48.21 or 48.22 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205, and employees of a school district if the board of directors of the school district seeks and receives the

approval of the authority to provide any of its insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the state employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32 or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32 or 41.40 RCW.

Sec. 6. RCW 41.05.021 and 1990 c 222 s 3 are each amended to read as follows:

The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The primary duties of the authority shall be to administer state employees' insurance benefits and retired or disabled school employees' insurance benefits and to study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care. The authority's duties include, but are not limited to, the following:

(1) To administer ((#)) health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(2) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(a) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(b) Utilization of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods;

(c) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(d) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis; and

(e) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031;

(3) To analyze areas of public and private health care interaction;

(4) To provide information and technical and administrative assistance to the board;

(5) To review and approve or deny applications from counties, municipalities, other political subdivisions of the state, and school districts to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and 28A.400.350, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(6) To appoint a health care policy technical advisory committee as required by RCW 41.05.150; ~~((and))~~

(7) To establish billing procedures and collect funds from school districts and educational service districts under section 13 of this act in a way that minimizes the administrative burden on districts; and

(8) To promulgate and adopt rules consistent with this chapter as described in RCW 41.05.160.

**Sec. 7.** RCW 41.05.050 and 1988 c 107 s 18 are each amended to read as follows:

(1) Every department, division, or separate agency of state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups. Contributions to be paid by school districts or educational service districts shall be adjusted by the authority to reflect that retired school employees are covered under section 14 of this act, and are not covered under RCW 41.05.080. All such contributions will be paid into the state employees' health insurance account.

(2) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. However, insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(3) The administrator with the assistance of the state employees' benefits board shall survey private industry and public employers in the state of Washington to determine the average employer contribution for group insurance

programs under the jurisdiction of the authority. Such survey shall be conducted during each even-numbered year but may be conducted more frequently. The survey shall be reported to the authority for its use in setting the amount of the recommended employer contribution to the employee insurance benefit program covered by this chapter. The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature.

**Sec. 8.** RCW 41.05.055 and 1989 c 324 s 1 are each amended to read as follows:

(1) The state employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for state employees and retired or disabled school employees.

(2) The board shall be composed of ~~((seven))~~ nine members appointed by the governor as follows:

(a) Three representatives of state employees, one of whom shall represent an employee association certified as exclusive representative of at least one bargaining unit of classified employees, one of whom shall represent an employee union certified as exclusive representative of at least one bargaining unit of classified employees, and one of whom is retired, is covered by a program under the jurisdiction of the board, and represents an organized group of retired public employees;

(b) ~~((Three))~~ One representative of retired or disabled school employees;

(c) Four members with experience in health benefit management and cost containment; and

~~((e))~~ (d) The administrator.

(3) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. The administrator shall serve as chair of the board. Meetings of the board shall be at the call of the chair.

**Sec. 9.** RCW 41.05.065 and 1988 c 107 s 8 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state: PROVIDED, That liability insurance shall not be made available to dependents.

(2) The state employees' benefits board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, exercise, and automobile and motorcycle safety;

(d) Utilization review procedures including, but not limited to prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers; and

(e) Effective coordination of benefits.

(3) The board shall design benefits and determine the terms and conditions of employee participation and coverage, including establishment of eligibility criteria.

(4) The board may authorize premium contributions for an employee and the employee's dependents. Such authorization shall require a vote of five members of the board for approval.

(5) Employees may choose participation in only one of the health care benefit plans developed by the board.

(6) The board shall review plans proposed by insurance carriers that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by carriers holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) The board shall develop benefit plans that provide health care benefits for retired or disabled school employees and their dependents, and shall establish terms and conditions of coverage under the plans. The board shall make available separate and appropriate plans that supplement medicare for retired or disabled school employees who are eligible for federal medicare coverage. The board shall also consider the elements referenced in subsection (2) of this section in developing the plans.

**Sec. 10.** RCW 41.05.075 and 1988 c 107 s 9 are each amended to read as follows:

(1) The administrator shall provide (~~employee~~) benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.



(2) The administrator shall establish a contract bidding process that encourages competition among insuring entities, is timely to the state budgetary process, and sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) The administrator shall establish methods for collecting, analyzing, and disseminating to covered individuals information on the cost and quality of services rendered by individual health care providers.

(6) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary to fulfill the administrator's duties as set forth in this chapter.

(7) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.88 RCW. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a)(i), (b), and (d).

(8) Beginning in January 1990, and each January thereafter, the administrator shall publish and distribute to each school district a description of health care benefit plans available through the authority and the estimated cost if school district employees were enrolled.

**Sec. 11.** RCW 41.05.080 and 1977 ex.s. c 136 s 6 are each amended to read as follows:

Retired or disabled state employees, or employees of county, municipal, or other political subdivisions covered by this chapter who are retired, but not including retired or disabled school employees, may continue their participation in insurance plans and contracts after retirement or disablement, under the qualifications, terms, conditions, and benefits set by the board: PROVIDED, That the rates charged such retired or disabled employees for health care will be developed from the same experience pool as active employees: PROVIDED FURTHER, That such retired or disabled employees shall bear the full cost of premiums required to provide such coverage: PROVIDED FURTHER, That such self pay rates will be established based on a separate rate for the employee, the spouse, and the children: PROVIDED FURTHER, That rates for a retired or disabled employee, spouse, or child who is eligible for and who elects to apply for medicare will be actuarially reduced to reflect the value of Part A and Part B of medicare. The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office.

**Sec. 12.** RCW 41.05.140 and 1988 c 107 s 12 are each amended to read as follows:

(1) The authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction except property and casualty insurance. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program.

(2) Reserves established by the authority for employee benefit programs shall be held in a separate trust fund by the state treasurer and shall be known as the state employees' insurance reserve fund. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the state employees' insurance reserve fund.

~~((2))~~ (3) Reserves established by the authority for programs for retired or disabled school employees shall be held in a separate trust fund by the state treasurer and shall be known as the retired school employees' insurance reserve fund hereby created. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the retired school employees' insurance reserve fund.

(4) Any savings realized as a result of a program created for employees under this section shall not be used to increase benefits unless such use is authorized by statute.

~~((3))~~ (5) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

~~((4))~~ (6) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

~~((5))~~ (7) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

**NEW SECTION. Sec. 13.** A new section is added to chapter 28A.400 RCW to read as follows:

(1) In a manner prescribed by the state health care authority, school districts and educational service districts shall remit to the health care authority for

deposit in the retired school employees' subsidy account established in section 15 of this act:

(a) During the period beginning October 1, 1993, and ending September 30, 1994:

(i) For each full-time employee of the district, ten dollars for each month of the school year;

(ii) For each part-time employee of the district who, at the time of the remittance, is employed in an eligible position as defined in RCW 41.32.010 or 41.40.010 and is eligible for employer fringe benefit contributions for basic benefits as defined in RCW 28A.400.270, ten dollars for each month of the school year, prorated by the proportion of employer fringe benefit contributions for a full-time employee that the part-time employee receives;

(b) Beginning October 1, 1994:

(i) For each full-time employee of the district, an amount equal to four and seven-tenths percent multiplied by the insurance benefit allocation rate in the appropriations act for a certificated or classified staff, for each month of the school year;

(ii) For each part-time employee of the district who, at the time of the remittance, is employed in an eligible position as defined in RCW 41.32.010 or 41.40.010 and is eligible for employer fringe benefit contributions for basic benefits as defined in RCW 28A.400.270, an amount equal to four and seven-tenths percent multiplied by the insurance benefit allocation rate in the appropriations act for a certificated or classified staff, for each month of the school year, prorated by the proportion of employer fringe benefit contributions for a full-time employee that the part-time employee receives.

(2) The legislature reserves the right to increase or decrease the percent or amount required to be remitted in this section.

**NEW SECTION.** Sec. 14. A new section is added to chapter 41.05 RCW to read as follows:

(1) After October 1, 1993, retired or disabled school employees and their dependents may purchase health care insurance coverage from the authority under terms and conditions established by this chapter and by the board.

(2) Retired or disabled school employees may enroll in benefit plans under the authority during enrollment periods established by the board.

(3) Retired or disabled school employees and their dependents shall pay the cost of premiums for the insurance offered by the authority. The authority shall charge as premiums, the cost to the authority of providing insurance coverage for retired and disabled school employees and their dependents, including any amounts necessary for reserves and administration. However, the premiums charged to a retired or disabled school employee shall be reduced by the amount of the subsidy provided in section 15 of this act.

**NEW SECTION.** Sec. 15. A new section is added to chapter 41.05 RCW to read as follows:

(1) The retired school employees' subsidy account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of the remittance paid by school districts and educational service districts under section 13 of this act.

(2) Moneys available in the account, as determined by the administrator, shall be used to reduce the health care insurance premiums charged to retired or disabled school employees under this chapter. The amount of any premium reduction shall be established by the board. However, use of moneys from the account shall not result in a premium reduction for retired or disabled school employees of more than fifty percent. Moneys from the account may be used to reduce premiums charged to dependents at the discretion of the board.

(3) From October 1, 1993, through September 30, 1994, moneys available in the account shall also be used to reduce premiums charged to persons who meet the definition of retired or disabled school employee in RCW 41.05.011, are not eligible for federal medicare coverage, and are covered under a group-purchased health insurance plan through a school district or educational service district. The moneys shall be paid to the appropriate insurance carrier, or in the case of self-insurance, to the district. Payments shall be made subject to submission of information to the satisfaction of the administrator that the recipient of the premium reduction is eligible to receive the reduction and that the moneys are used for their intended purpose. If health care insurance for active school district and educational service district employees is required to be provided solely through the authority beginning on or before October 1, 1993, the provisions of this subsection (3) shall have no effect.

(4) Should the legislature revoke or reduce any remuneration or benefits granted under this section, an affected retired or disabled employee shall not be entitled thereafter to receive such benefits as a matter of contractual right.

(5) Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator.

(6) The state treasurer and the state investment board may invest moneys in the retired school employees' subsidy account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the account.

**NEW SECTION.** Sec. 16. A new section is added to chapter 41.05 RCW to read as follows:

(1) The retired school employees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of contributions, premium payments from retired or disabled school employees, subsidy amounts from the retired school employees' subsidy account, reserves, dividends, and refunds, and for payment of premiums for retired or disabled school employee benefit contracts and operating expenses incurred by the authority in the administration of benefit plans for retired or disabled school

employees. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator.

(2) Disbursements from the account are not subject to appropriation, but shall be subject to the allotment procedure provided under chapter 43.88 RCW.

(3) The state treasurer and the state investment board may invest moneys in the retired school employees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the account.

NEW SECTION. Sec. 17. Sections 3, 7, and 11 of this act shall take effect October 1, 1993.

NEW SECTION. Sec. 18. Sections 1, 2, 4 through 6, 8 through 10, and 12 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 19. Section 8 of this act is null and void if Engrossed Second Substitute Senate Bill No. 5304 is enacted into law by July 1, 1993, and contains an amendment to RCW 41.05.055.

Passed the House April 20, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 15, 1993.

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## CHAPTER 387

[Engrossed Substitute House Bill 1806]

### WELL CONSTRUCTION, CONTRACTORS, AND OPERATORS—REVISIONS

Effective Date: 7/1/93

AN ACT Relating to wells; amending RCW 18.104.010, 18.104.020, 18.104.030, 18.104.040, 18.104.043, 18.104.048, 18.104.050, 18.104.060, 18.104.070, 18.104.080, 18.104.100, 18.104.110, 18.104.120, 18.104.150, 18.104.155, 43.21B.300, 18.104.180, 18.104.900, and 89.16.055; reenacting and amending RCW 43.21B.110; adding new sections to chapter 18.104 RCW; prescribing penalties; providing an expiration date; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 18.104.010 and 1971 ex.s. c 212 s 1 are each amended to read as follows:

The legislature declares that the drilling, making or constructing of ((water)) wells ((using the ground water resources)) within the state is a business and activity of vital interest to the public. In order to protect the public health, welfare, and safety of the people it is necessary that provision be made for the regulation and licensing of ((water)) well contractors and operators and for the regulation of ((water)) well design and construction.

Sec. 2. RCW 18.104.020 and 1983 1st ex.s. c 27 s 14 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter, unless a different meaning is plainly required by the context.

(1) "Abandoned well" means a well that is unused, unmaintained, and is in such disrepair as to be unusable.

(2) "Constructing a well" or "construct a well" means ~~(and includes)~~;

(a) Boring, digging, drilling, or excavating ~~(and)~~ a well;

(b) Installing casing, sheeting, lining, or well screens, ~~((whether in the installation of a new well or))~~ in a well; or

(c) Drilling a geotechnical soil boring.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

~~((2))~~ (3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(4) "Department" means the department of ecology.

~~((3))~~ (5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

~~((4))~~ (7) "Geotechnical soil boring" or "boring" means an uncased well drilled for purpose of obtaining soil samples to ascertain structural properties of the subsurface. Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.

(8) "Ground water" means and includes ground waters as defined in RCW 90.44.035~~(, as now or hereafter amended)~~.

~~((5))~~ (9) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(10) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(11) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(12) "Operator" means ~~((any))~~ a person~~(, other than a person exempted by RCW 18.104.180,)~~ who (a) is employed by a ~~((water))~~ well contractor ~~((for the control and supervision of the))~~; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a ~~((water))~~ well ~~((or for the operation of water))~~ or who operates well construction equipment.

~~((6))~~ (13) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation association, or other entity who owns the property on which the well is or will be constructed.

(14) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

(15) "Resource protection well" means a cased boring used to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, vapor extraction wells, and instrumentation wells.

(16) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(17) "Water well" means ~~(and includes)~~ any excavation that is ~~(drilled, cored, bored, washed, driven, dug, jetted, or otherwise)~~ constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water. ~~("Water well" does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.~~

~~(7))~~ (18) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(19) "Well" means water wells, resource protection wells, instrumentation wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(20) "Well contractor" means a resource protection well contractor and a water well contractor.

Sec. 3. RCW 18.104.030 and 1971 ex.s. c 212 s 3 are each amended to read as follows:

It is unlawful:

(1) For any ~~(water well contractor)~~ person to supervise, construct, alter, or decommission a ~~(water)~~ well ~~(for compensation)~~ without complying with the ~~(licensing)~~ provisions of this chapter~~(;~~

~~(2) For any water well contractor to construct a water well for compensation without complying with)~~ and the rules ~~(and regulations)~~ for ~~(water)~~ well construction adopted pursuant to this chapter;

~~((3) For any water well construction operator to supervise the construction of a water well without having an operators license as provided in this chapter))~~

(2) For any person to cause a well to be constructed in violation of the standards

for well construction established by this chapter and rules adopted by the department pursuant to this chapter;

(3) For a prospective water well owner to have a water well constructed without first obtaining a water right permit, if a permit is required;

(4) For any person to construct, alter, or decommission a well unless the fees required by section 9 of this act have been paid;

(5) For a person to tamper with or remove a well identification tag except during well alteration; and

(6) Except as provided in RCW 18.104.180, for any person to contract to engage in the construction of a well or to act as a well operator without first obtaining a license pursuant to this chapter.

**Sec. 4.** RCW 18.104.040 and 1991 c 3 s 249 are each amended to read as follows:

The department shall have the power:

(1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter;

(2) At all reasonable times, to enter upon lands for the purpose of inspecting, taking measurements from, or tagging any ((water)) well, ((drilled or being drilled, at all reasonable times)) constructed or being constructed;

(3) To call upon or receive professional or technical advice from ((any)) the department of health, the technical advisory group created in section 25 of this act, or any other public agency or ((any)) person;

(4) To ((make such)) adopt rules, in consultation with the department of health and the technical advisory group created in section 25 of this act, governing licensing ((hereunder)) and ((water)) well construction as may be appropriate to carry out the purposes of this chapter. ((Without limiting the generality of the foregoing,)) The rules adopted by the department may ((in cooperation with the department of health make rules regarding)) include, but are not limited to:

(a) Standards for the construction and maintenance of ((water)) wells and their casings;

(b) Methods of capping, sealing ((artesian)), and decommissioning wells ((and water wells to be abandoned or which may contaminate other)) to prevent contamination of ground water resources and to protect public health and safety;

(c) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;

(d) The manner of conducting and the content of examinations required to be taken by applicants for license hereunder;

(e) Requirements for the filing of notices of intent, well reports, and the payment of fees;

(f) Reporting requirements of ((water)) well contractors;

((f)) (g) Limitations on ((water)) well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource;



(5) To require the operator in the construction of a well and the property owner in the maintenance of a well to guard against waste and contamination of the ground water resources;

(6) To require the operator to place a well identification tag on a new well and on an existing well on which work is performed after the effective date of rules requiring well identification tags and to place or require the owner to place a well identification tag on an existing well;

(7) To require the well owner to repair or decommission any well:

(a) That is abandoned, unusable, or not intended for future use; or

(b) That is an environmental, safety, or public health hazard.

**Sec. 5.** RCW 18.104.043 and 1992 c 67 s 2 are each amended to read as follows:

(1) If requested in writing by the governing body of a local health district or county, the department by memorandum of agreement may delegate to the governing body the authority to administer and enforce the well tagging, sealing, and decommissioning portions of the water well construction program.

(2) The department shall determine whether a local health district or county that seeks delegation under this section has the resources, capability, and expertise, including qualified field inspectors, to administer the delegated program. If the department determines the local government has these resources, it shall notify (~~drilling~~) well contractors, consultants, and operators of the proposal. The department shall accept written comments on the proposal for sixty days after the notice is mailed.

(3) If the department determines that a delegation of authority to a local health district or county to administer and enforce the well sealing and decommissioning portions of the water well construction program will enhance the public health and safety and the environment, the department and the local governing body may enter into a memorandum of agreement setting forth the specific authorities delegated by the department to the local governing body. The memorandum of agreement shall provide for an initial review of the delegation within one year and for periodic review thereafter.

(4) The local governing body shall exercise any authority delegated under this section in accordance with this chapter, other applicable laws, the memorandum of agreement, and applicable ordinances. If, after a public hearing, the department determines that a local governing body is not administering the program in accordance with this chapter, it shall notify the local governing body of the deficiencies. If corrective action is not taken within a reasonable time, not to exceed sixty days, the department by order shall withdraw the delegation of authority.

(5) The department shall promptly furnish the local governing body with a copy of each water well report and notification of start cards received in the area covered by a delegated program.

(6) The department and the local governing body shall coordinate to reduce duplication of effort and shall share all appropriate information including technical reports, violations, and well reports.

(7) Any person aggrieved by a decision of a local health district or county under a delegated program may appeal the decision to the department. The department's decision is subject to review by the pollution control hearings board as provided in RCW (~~(48.104.130)~~) 43.21B.110.

(8) The department shall not delegate the authority to license (~~(water)~~) well contractors, renew licenses, receive notices of intent to commence (~~(drilling)~~) constructing a well, receive well reports, or collect state fees provided for in this chapter.

**Sec. 6.** RCW 18.104.048 and 1987 c 394 s 3 are each amended to read as follows:

~~((To enable the department to monitor the construction, reconstruction, and abandonment of water wells more efficiently and effectively, water well contractors))~~ A property owner or the owner's agent shall ((provide notification to)) notify the department of ((their)) his or her intent to begin well construction, reconstruction, or ((abandonment)) decommissioning procedures at least seventy-two hours in advance of commencing work. The ((notification)) notice shall be submitted on forms provided by the department and shall be accompanied by the fees required by section 9 of this act. The notice shall contain the name of the owner of the well, location of the well, proposed use, approximate start date, ((driller's)) well contractor's or operator's name and license number, ((drilling)) company's name, and other pertinent information as prescribed by rule of the department. Rules of the department shall also provide for prior telephonic notification by well ((drillers)) contractors or operators in exceptional situations. The department shall issue a receipt indicating that the notice required by this section has been filed and the fees required by section 9 of this act have been paid not later than three business days after the department has received the notice and fees.

**NEW SECTION. Sec. 7.** A new section is added to chapter 18.104 RCW to read as follows:

The department by rule shall adopt procedures to permit a well operator to modify construction standards to meet unforeseen circumstances encountered during the construction of a well. The procedures shall be developed in consultation with the technical advisory group established in section 25 of this act.

**Sec. 8.** RCW 18.104.050 and 1971 ex.s. c 212 s 5 are each amended to read as follows:

~~((In order to enable the state to protect the welfare, health and safety of its citizens, any water))~~ (1) A well contractor shall furnish a ((water)) well report to the director within thirty days after the completion of the construction or alteration of a well by ((him of any water well)) the contractor. The director, by

~~((regulation))~~ rule, shall prescribe the form of the report and the information to be contained therein.

(2) In the case of a dewatering well project:

(a) A single well construction report may be submitted for all similar dewatering wells constructed with no significant change in geologic formation; and

(b) A single well decommissioning report may be submitted for all similar dewatering wells decommissioned that have no significant change in geologic formation.

**NEW SECTION. Sec. 9.** A new section is added to chapter 18.104 RCW to read as follows:

(1) A fee is hereby imposed on each well constructed in this state on or after July 1, 1993.

(2)(a) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is one hundred dollars.

(b) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is two hundred dollars.

(c) The fee for a new resource protection, observation, and monitoring well is forty dollars for each well.

(d) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(3) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the department as provided by RCW 18.104.048. The department by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. The department shall refund the amount of any fees collected for any wells on which construction is not started.

**Sec. 10.** RCW 18.104.060 and 1971 ex.s. c 212 s 6 are each amended to read as follows:

Notwithstanding and in addition to any other powers granted to the department, whenever it appears to the director, or to an assistant authorized by the director to issue regulatory orders under this section, that a person is violating or is about to violate any of the provisions of this chapter, the director, or ~~((his))~~ the director's authorized assistant, may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to the addressee only with return receipt requested and acknowledged by him or her. The order shall specify the provision of this chapter, and if applicable, the rule ~~((or regulation))~~ adopted pursuant to this chapter alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific

and reasonable time. ~~((A regulatory))~~ An order issued ~~((hereunder))~~ under this chapter shall become effective immediately upon receipt by the person to whom the order is directed, and shall become final unless review thereof is requested as provided in this chapter.

NEW SECTION. Sec. 11. A new section is added to chapter 18.104 RCW to read as follows:

(1) The department may order a well contractor or well operator to repair, alter, or decommission a well if the department demonstrates that the construction of the well did not meet the standards for well construction in effect at the time construction of the well was completed.

(2) The department may not issue an order pursuant to this section:

(a) For wells for which construction has been substantially completed before July 1, 1993, more than six years after construction has been substantially completed; or

(b) For wells for which construction has been substantially completed on or after July 1, 1993, more than three years after construction has been substantially completed.

For purposes of this subsection, "construction has been substantially completed" has the same meaning as "substantial completion of construction" in RCW 4.16.310.

(3) Subsection (2) of this section shall only apply to a well for which the notice of construction required by RCW 18.104.048 and the report required by RCW 18.104.050 have been filed with the department.

Sec. 12. RCW 18.104.070 and 1987 c 394 s 2 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))~~ operator's license if ~~((he))~~ the person:

(1) Has ~~((made))~~ submitted a completed application ~~((therefor))~~ to the department on forms provided by the department and has paid to the department ~~((an))~~ the application fee ~~((of twenty-five dollars))~~ determined by rule adopted pursuant to this chapter; 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))~~ the field experience and educational training required by rule adopted by the department pursuant to this chapter; 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 satisfaction of the department, such applicant shall be entitled to an oral examination in lieu of the written examination authorized herein))~~; and

(4) Has passed an on-site examination by the department if the person's qualifying field experience under subsection (2) of this section is from another state. The department may waive the on-site examination.

**NEW SECTION. Sec. 13.** A new section is added to chapter 18.104 RCW to read as follows:

The department may issue a water well construction operator's training license if the person:

(1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee required by rules adopted pursuant to this chapter;

(2) Has acquired field experience and educational training required by rules adopted pursuant to this chapter;

(3) Has passed a written examination as provided for in RCW 18.104.080;

(4) Has passed an on-site examination by the department; and

(5) Presents a statement by a person licensed under this chapter, other than a trainee, signed under penalty of perjury as provided in RCW 9A.72.085, verifying that the applicant has the field experience required by rules adopted pursuant to this chapter and assuming liability for any and all well construction activities of the person seeking the training license.

A person with a water well construction operator's training license may operate a drilling rig without the direct supervision of a licensed operator if a licensed operator is available by radio, telephone, or other means of communication.

**NEW SECTION. Sec. 14.** A new section is added to chapter 18.104 RCW to read as follows:

A person shall be qualified to receive a resource protection well operator's license if the person:

(1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee required by rules adopted pursuant to this chapter;

(2) Has acquired field experience and educational training required by rules adopted pursuant to this chapter;

(3) Has passed a written examination as provided for in RCW 18.104.080. This requirement shall not apply to a person who passed the written examination to obtain a resource protection well construction operator's training license; and

(4) Has passed an on-site examination by the department if the person's qualifying field experience is from another state. The department may waive the on-site examination.

A person with a license issued pursuant to this chapter before the effective date of this section may obtain a resource protection well construction operator's license by paying the application fee determined by rule adopted by the department pursuant to this chapter and submitting evidence required by the

department to demonstrate that the person has the required experience to construct resource protection wells.

**NEW SECTION. Sec. 15.** A new section is added to chapter 18.104 RCW to read as follows:

The department may issue a resource protection well operator’s training license if the person:

- (1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee required by rules adopted pursuant to this chapter;
- (2) Has acquired field experience and educational training required by rules adopted pursuant to this chapter;
- (3) Has passed a written examination as provided for in RCW 18.104.080;
- (4) Has passed an on-site examination by the department; and
- (5) Presents a statement by a person licensed under this chapter, other than a trainee, signed under penalty of perjury as provided in RCW 9A.72.085, verifying that the applicant has the field experience required by rules adopted pursuant to this chapter and assuming liability for any and all well construction activities of the person seeking the training license.

A person with a resource protection well construction operator’s training license may operate a drilling rig without direct supervision of a licensed operator if a licensed operator is accessible by radio, telephone, or other means of communication.

**Sec. 16.** RCW 18.104.080 and 1991 c 3 s 250 are each amended to read as follows:

The examination(~~(, which is made a prerequisite for obtaining a license hereunder,)~~) for a license issued pursuant to this chapter shall be prepared to test knowledge and understanding of at least the following subjects:

- (1) Washington ground water laws as they relate to well construction;
- (2) Sanitary standards for ~~((water))~~ well drilling and construction of ~~((water))~~ wells;
- (3) Types of ~~((water))~~ well construction;
- (4) Drilling tools and equipment;
- (5) Underground geology as it relates to ~~((water))~~ well construction; and
- (6) Rules of the department and the department of health relating to ~~((water))~~ well construction.

Examinations shall be held at such times and places as may be determined by the department but not later than thirty days after an applicant has filed a completed application with the department. The department shall make a determination of the applicant’s qualifications for a license within ten days after the examination.

**Sec. 17.** RCW 18.104.100 and 1971 ex.s. c 212 s 10 are each amended to read as follows:

~~((The term for the effectiveness of any license))~~ (1) Licenses issued pursuant to this chapter shall be ~~((one)) renewed every two years~~((commencing on the date the license is issued))~~. ~~((Every))~~ A license shall be renewed ~~((annually))~~ upon payment of a renewal fee ~~((of ten dollars))~~ and completion of continuing education required by rule adopted by the department.~~ If a licensee fails to submit an application for renewal, ~~((together with))~~ the renewal fee, ~~((before the end of the effective term of his license, his license shall be suspended for thirty days on notice by the director. If his renewal fee is paid prior to the end of said suspension period, the suspension shall automatically terminate. If during the period of suspension renewal is not completed, his license shall be revoked: PROVIDED, That the director shall give the licensee ten days notice prior to the revocation of any license for failure to renew))~~ and proof of completion of the required continuing education, the license shall expire at the end of its effective term.

(2) A person whose license ~~((is revoked under this section and who thereafter desires to engage in the supervision of construction of water wells))~~ has expired must ~~((make application))~~ apply for a new license ~~((and pay twenty-five dollars))~~ as provided in ~~((RCW 18.104.070))~~ this chapter. The department may waive the requirement for a written examination and on-site testing for a person whose license has expired.

(3) The department may refuse to renew a license if the licensee has not complied with an order issued by the department or has not paid a penalty imposed in accordance with this chapter, unless the order or penalty is under appeal.

(4) The department may issue a conditional license to enable a former licensee to comply with an order to correct problems with a well.

**Sec. 18.** RCW 18.104.110 and 1991 c 3 s 251 are each amended to read as follows:

In cases other than those relating to the failure of a licensee to renew a license, ~~((any license issued hereunder may be suspended or revoked by))~~ the director may suspend or revoke a license issued pursuant to this chapter for any of the following reasons:

- (1) For fraud or deception in obtaining the license;
- (2) For fraud or deception in reporting under RCW 18.104.050;
- (3) For violating the provisions of this chapter, or of any lawful rule or regulation of the department or the department of health.

No license shall be suspended for more than six months. No person whose license is revoked shall be eligible to apply for a license for one year from the effective date of the final order of revocation.

**Sec. 19.** RCW 18.104.120 and 1983 c 93 s 1 are each amended to read as follows:

Any person with an economic or noneconomic interest may make a complaint against any ~~((water))~~ well contractor or operator for violating this

chapter or any regulations under it to the department of ecology. The complaint shall be in writing, signed by the complainant, and specify the grievances against the licensee. The department shall respond to the complaint by issuance of an order it deems appropriate. Review of the order shall be subject to the hearings procedures set forth in RCW 18.104.130.

**Sec. 20.** RCW 18.104.150 and 1971 ex.s. c 212 s 15 are each amended to read as follows:

~~((All receipts realized in the administration of this chapter shall be paid into the general fund.))~~ (1) All fees paid under this chapter shall be credited by the state treasurer to the reclamation account established by chapter 89.16 RCW. Subject to legislative appropriation, the fees collected under this chapter shall be allocated and expended by the director for the administration of the well construction, well operators' licensing, and education programs.

(2) The department shall provide grants to local governing entities that have been delegated portions of the well construction program pursuant to RCW 18.104.043 to assist in supporting well inspectors hired by the local governing body. Grants provided to a local governing body shall not exceed the revenues generated from fees for the portion of the program delegated and from the area in which authority is delegated to the local governing body.

**Sec. 21.** RCW 18.104.155 and 1987 c 394 s 1 are each amended to read as follows:

(1) The department of ecology may ~~((levy))~~ assess a civil penalty ~~((of up to one hundred dollars per day))~~ for a 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))~~

(2) There shall be three categories of violations: Minor, serious, and major.

(a) A minor violation is a violation that does not seriously threaten public health, safety, and the environment. Minor violations include, but are not limited to:

(i) Failure to submit completed start cards and well reports within the required time;

(ii) Failure to submit variance requests before construction;

(iii) Failure to submit well construction fees;

(iv) Failure to place a well identification tag on a new well; and

(v) Minor or reparable construction problems.

(b) A serious violation is a violation that poses a critical or serious threat to public health, safety, and the environment. Serious violations include, but are not limited to:

(i) Improper well construction;

(ii) Intentional and improper location or siting of a well;

(iii) Construction of a well without a required permit;

(iv) Violation of decommissioning requirements;



(v) Repeated minor violations; or

(vi) Construction of a well by a person whose license has expired or has been suspended for not more than ninety days.

(c) A major violation is the construction of a well by a person:

(i) Without a license; or

(ii) After the person's license has been suspended for more than ninety days or revoked.

(3)(a) The penalty for a minor violation shall be not less than one hundred dollars and not more than five hundred dollars. Before the imposition of a penalty for a minor violation, the department may issue an order of noncompliance to provide an opportunity for mitigation or compliance.

(b) The penalty for a serious violation shall be not less than five hundred dollars and not more than five thousand dollars.

(c) The penalty for a major violation shall be not less than five thousand dollars and not more than ten thousand dollars.

(4) In determining the appropriate penalty under subsection (3) of this section the department shall consider whether the person:

(a) Has demonstrated a general disregard for public health and safety through the number and magnitude of the violations;

(b) Has demonstrated a disregard for the well construction laws or rules in repeated or continuous violations; or

(c) Knew or reasonably should have known of circumstances that resulted in the violation.

(5) Penalties provided for in this section shall be imposed pursuant to RCW 43.21B.300. The department shall provide thirty days written notice of a violation as provided in RCW 43.21B.300(3).

(6) For ~~((each notice regarding))~~ informational purposes, a copy of the notice of 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))~~ shall also be sent by the department to the well owner.

(7) Penalties collected by the department pursuant to this section shall be deposited in the reclamation account established by chapter 89.16 RCW. Subject to legislative appropriation, the penalties may be spent only for purposes related to the restoration and enhancement of ground water resources in the state.

**Sec. 22.** RCW 43.21B.110 and 1992 c 174 s 13 and 1992 c 73 s 1 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, the administrator of the office of marine safety, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

(c) The issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, or the modification of the conditions or the terms of a waste disposal permit.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Any other decision by the department, the administrator of the office of marine safety, or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

**Sec. 23.** RCW 43.21B.300 and 1992 c 73 s 2 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330 shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department, the administrator of the office of marine safety, or the local air authority, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department, the administrator, or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department, the administrator, or authority may remit or mitigate the penalty upon whatever terms the department, the administrator, or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all

such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department, the administrator, or authority thirty days after receipt by the person penalized of the notice imposing the penalty or thirty days after receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

- (a) Thirty days after receipt of the notice imposing the penalty;
- (b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or
- (c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department or the administrator within thirty days after it becomes due and payable, the attorney general, upon request of the department or the administrator, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account, created by RCW 70.105.180, and RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390.

**Sec. 24.** RCW 18.104.180 and 1971 ex.s. c 212 s 18 are each amended to read as follows:

No license (~~hereunder~~) under this chapter shall be required of:

(1) Any individual who personally (~~drills~~) constructs a well on land which is owned or leased by (~~him~~) the individual or in which (~~he~~) the individual has a beneficial interest as a contract purchaser and is used by the individual for farm or (~~nonecommercial domestic~~) single-family residential use only. An individual who constructs a well without a license pursuant to this subsection shall comply with all other requirements of this chapter and rules adopted by the department,

including but not limited to, well construction standards, payment of well construction fees, and notification of well construction required by RCW 18.104.048. An individual without a license may construct not more than one well every two years pursuant to the provisions of this subsection.

(2) ~~((Any))~~ An individual who performs labor or services for a ~~((water))~~ well contractor in connection with the ~~((drilling))~~ construction of a well at the direction and under the supervision and control of a licensed operator who is present at the construction site.

(3) A person licensed under the provisions of chapter 18.08 or 18.43 RCW if in the performance of duties covered by those licenses.

NEW SECTION. Sec. 25. A new section is added to chapter 18.104 RCW to read as follows:

(1) For the purpose of carrying out the provisions of this chapter, the director shall appoint a technical advisory group, chaired by the department. The technical advisory group shall have twelve members: Two members shall represent the department of ecology, six members shall represent resource protection well contractors or water well contractors, one member shall represent the department of health, one member shall represent local health departments, one member shall represent licensed professional engineers, and one member shall be a scientist knowledgeable in the design and construction of wells.

(2) The technical advisory group shall assist the department in the development and revision of rules; the preparation and revision of licensing examinations; the development of training criteria for inspectors, well contractors, and well operators; and the review of proposed changes to the minimum standards for construction and maintenance of wells by local governments for the purpose of achieving continuity with technology and state rules.

(3) The group shall meet at least twice each year to review rules and suggest any necessary changes.

(4) Each member of the group shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses while engaged in the business of the group as prescribed in RCW 43.03.050 and 43.03.060.

**Sec. 26.** RCW 18.104.900 and 1971 ex.s. c 212 s 19 are each amended to read as follows:

This chapter shall be known and may be cited as the "Washington ~~((Water))~~ well construction act~~((<sup>2</sup>))~~."

**Sec. 27.** RCW 89.16.055 and 1981 c 216 s 1 are each amended to read as follows:

In addition to the powers provided in RCW 89.16.050, the department of ecology is authorized and empowered to:

(1) Conduct surveys, studies, investigations, and water right examinations for proposed reclamation projects or the rehabilitation of existing reclamation

projects that may be funded fully or partially from the receipts of the sale of bonds issued by the state of Washington.

(2) Support the preparation for and administration of proceedings, provided in RCW 90.03.110 or 90.44.220, or both, pertaining to river systems or other water bodies that are associated with existing or proposed reclamation projects.

(3) Conduct a regulatory program for well construction as provided in chapter 18.104 RCW.

Funds of the account established by RCW 89.16.020 may, as appropriated by the legislature, be used in relation to the powers provided in this section, notwithstanding any other provisions of chapter 89.16 RCW that may be to the contrary.

NEW SECTION. Sec. 28. Section 5 of this act expires on June 30, 1996.

NEW SECTION. Sec. 29. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 14, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 388

[House Bill 1838]

### MEDICARE SUPPLEMENT INSURANCE—MINIMUM STANDARDS FOR BENEFITS

Effective Date: 7/25/93

AN ACT Relating to minimum standards for benefits in medicare supplement insurance; and amending RCW 48.66.041.

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

Sec. 1. RCW 48.66.041 and 1992 c 138 s 4 are each amended to read as follows:

(1) The insurance commissioner shall adopt rules to establish minimum standards for benefits in medicare supplement insurance policies and certificates.

(2) The commissioner shall adopt rules to establish specific standards for medicare supplement insurance policy or certificate provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions;

(d) Definitions of terms;

(e) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;

(f) Establishing uniform methodology for calculating and reporting loss ratios;

(g) Assuring public access to policies, premiums, and loss ratio information of an issuer of medicare supplement insurance;

(h) Establishing a process for approving or disapproving proposed premium increases; and

(i) Establishing standards for medicare SELECT policies and certificates.

(3) The insurance commissioner may adopt rules that establish disclosure standards for replacement of policies or certificates by persons eligible for medicare (~~by reason of age~~).

(4) The insurance commissioner may by rule prescribe that an informational brochure, designed to improve the buyer's understanding of medicare and ability to select the most appropriate coverage, be provided to persons eligible for medicare by reason of age. The commissioner may require that the brochure be provided to applicants concurrently with delivery of the outline of coverage, except with respect to direct response insurance, when the brochure may be provided upon request but no later than the delivery of the policy.

(5) In the case of a state or federally qualified health maintenance organization, the commissioner may waive compliance with one or all provisions of this section until January 1, 1983.

Passed the House March 8, 1993.

Passed the Senate April 6, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 389**

[Engrossed Substitute House Bill 1862]

**PASCO TRADE RECREATION AGRICULTURE CENTER—SPECIAL  
LODGING TAX FOR**

**Effective Date: 7/25/93**

AN ACT Relating to a special excise tax on hotel, motel, roominghouse, and trailer camp charges; amending RCW 67.28.200; and adding a new section to chapter 67.28 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 67.28 RCW to read as follows:

(1) The legislative body of a city with a population of over ten thousand in a county that is the smallest county in a metropolitan statistical area as defined on the effective date of this act that has a population of between thirty-eight thousand and fifty thousand may levy and collect a special excise tax not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, roominghouse, tourist court, motel, trailer camp, and the granting of a similar license to use real property, as distinguished from the renting or leasing

of real property. For the purposes of this tax, it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the property.

(2) The tax authorized in subsection (1) of this section is in addition to any other tax authorized by law.

(3) A seller, as defined in RCW 82.08.010, who is required to collect a tax under this section, shall pay the tax to the city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(4) The tax levied and collected under this section must be credited to a special fund of the city. The taxes may be levied only for the purpose of paying any part of the cost of siting, acquisition, construction, operation, and maintenance of a trade recreation agricultural center, which facility includes an exhibition hall, a meeting and convention center, and an agricultural arena, in the city and may be used for and pledged to the payment of bonds, leases, or other obligations incurred for these purposes.

(5) The tax imposed under this section shall expire when all obligations for which the taxes have been pledged are satisfied.

**Sec. 2.** RCW 67.28.200 and 1991 c 331 s 2 are each amended to read as follows:

The legislative body of any county or city may establish reasonable exemptions and may adopt such reasonable rules and regulations as may be necessary for the levy and collection of the taxes authorized ~~((by RCW 67.28.180, 67.28.182, and 67.28.230 through 67.28.250, and 67.28.260))~~ under this chapter. The department of revenue shall perform the collection of such taxes on behalf of such county or city at no cost to such county or city.

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 390

[House Bill 1884]

### NONPROFIT ORGANIZATIONS PROVIDING CREDIT SERVICES—BUSINESS AND OCCUPATION TAX EXEMPTION

Effective Date: 7/25/93

AN ACT Relating to nonprofit organizations providing credit services; adding a new section to chapter 82.04 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 82.04 RCW to read as follows:

This chapter does not apply to nonprofit organizations in respect to amounts derived from provision of the following services:

- (1) Presenting individual and community credit education programs including credit and debt counseling;
- (2) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;
- (3) Establishing and administering negotiated repayment programs for debtors; or
- (4) Providing advice or assistance to a debtor with regard to subsection (1), (2), or (3) of this section.

***\*NEW SECTION. Sec. 2. (1) Nothing in section 1 of this act may be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to the introduction or enactment of this act.***

***(2) This act shall be applied retroactively.***

**\*Sec. 2 was vetoed, see message at end of chapter.**

Passed the House March 17, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 15, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 15, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, House Bill No. 1884, entitled:

"AN ACT Relating to nonprofit organizations providing credit services,"

House Bill No. 1884 provides a B & O tax exemption for certain nonprofit corporations providing credit services. Section 2 of the bill contains an inappropriate and potentially costly retroactivity clause. Applying this exemption retroactively is unfair to taxpayers who have complied with the existing law by paying their taxes accurately and in a timely manner. Further, it encourages taxpayers to delay paying lawful taxes in the hope of future legislative exemption. I have, therefore, vetoed section 2 of House Bill No. 1884.

With the exception of section 2, House Bill No. 1884 is approved."



## CHAPTER 391

[Substitute House Bill 1886]

## POWER BOILERS—EXTENSION OF PERIOD BETWEEN INSPECTIONS

Effective Date: 7/25/93

AN ACT Relating to authorizing the board of boiler rules to prescribe extended inspection schedules for power boilers; and amending RCW 70.79.240 and 70.79.250.

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

**Sec. 1.** RCW 70.79.240 and 1951 c 32 s 22 are each amended to read as follows:

Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure (~~and~~), except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture.

**Sec. 2.** RCW 70.79.250 and 1951 c 32 s 23 are each amended to read as follows:

In the case of power boilers a grace period of not more than two months longer than the (~~twelve months~~) period established by the board under RCW 70.79.240(1) may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than

two months longer than the period between inspections prescribed by the board shall elapse between internal inspections.

Passed the House April 20, 1993.  
Passed the Senate April 12, 1993.  
Approved by the Governor May 15, 1993.  
Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 392**

[Substitute House Bill 1907]

**COMMON CARRIERS—ESTIMATING CHARGES FOR  
CARRYING HOUSEHOLD GOODS**

**Effective Date: 7/25/93**

AN ACT Relating to estimating charges for carrying household goods; adding a new section to chapter 81.80 RCW; and prescribing penalties.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 81.80 RCW to read as follows:

When a common carrier gives an estimate of charges for services in carrying household goods, the carrier will endeavor to accurately reflect the actual charges. The carrier is subject to a monetary penalty not to exceed one thousand dollars per violation when the actual charges exceed the percentages allowed by the commission.

Passed the House April 20, 1993.  
Passed the Senate April 14, 1993.  
Approved by the Governor May 15, 1993. . .  
Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 393**

[Substitute House Bill 2036]

**MULTIMODAL TRANSPORTATION PROGRAMS AND  
PROJECTS SELECTION COMMITTEE**

**Effective Date: 5/15/93**

AN ACT Relating to multimodal transportation funding; amending RCW 82.44.180 and 81.104.090; adding a new chapter to Title 47 RCW; and declaring an emergency.

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

**Sec. 1.** RCW 82.44.180 and 1991 c 199 s 224 are each amended to read as follows:

(1) The transportation fund is created in the state treasury. Revenues under RCW 82.44.020 (1) and (2), 82.44.110, 82.44.150, and the surcharge under RCW 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes.

(2) There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be ~~((expended))~~ appropriated to the department of transportation and allocated by the multimodal transportation programs and projects selection committee created in section 4 of this act to public transportation projects within the ~~((three county))~~ region from which the funds are derived, solely for:

(a) Planning;

(b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW ~~((81.104.010))~~ 81.104.015;

~~((b))~~ (d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

~~((e))~~ (e) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board.

(3) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(c) shall be ~~((available to))~~ appropriated to the department of transportation and allocated by the multimodal transportation programs and projects selection committee to public transportation projects submitted by the public transportation systems from which the funds are derived, solely for:

(a) Planning;

(b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW ~~((81.104.010))~~ 81.104.015;

~~((b))~~ (d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

~~((e))~~ (e) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

~~((f))~~ (f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board.

**Sec. 2.** RCW 81.104.090 and 1991 c 318 s 8 are each amended to read as follows:

The department of transportation shall be responsible for distributing amounts appropriated from the high capacity transportation account ~~((and))~~, which shall ~~((prioritize funding requests))~~ be allocated by the multimodal transportation programs and projects selection committee based on criteria in subsection ~~((3))~~ (2) of this section.

(1) ~~((The department shall establish an advisory council of policy and technical experts pursuant to RCW 47.01.091 to assist in the review of requests~~

~~for high capacity transportation account funds. The council shall be comprised of one representative from each congressional district, a designee of the governor, the executive director or a designee of the transportation improvement board, the director of the Washington state transportation center, and the chair or designee of the legislative transportation committee.~~

~~(2))~~ State high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

~~((3))~~ (2) Authorizations for state funding for high capacity transportation planning projects shall be subject to the following criteria:

(a) Conformance with the designated regional transportation planning organization's regional transportation plan;

(b) Local matching funds;

(c) Demonstration of projected improvement in regional mobility;

(d) Conformance with planning requirements prescribed in RCW 81.104.100, and if five hundred thousand dollars or more in state funding is requested, conformance with the requirements of RCW 81.104.110; and

(e) Establishment, through interlocal agreements, of a joint regional policy committee as defined in RCW 81.104.030 or 81.104.040.

~~((4))~~ (3) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100.

NEW SECTION. **Sec. 3.** There is significant state interest in assuring that viable multimodal transportation programs are available throughout the state. The legislature recognizes the need to create a mechanism to fund multimodal transportation programs and projects. The legislature further recognizes the complexities associated with current funding mechanisms and seeks to create a process that would allow for all transportation programs and projects to compete for limited resources.

NEW SECTION. **Sec. 4.** (1) There is hereby created a multimodal transportation programs and projects selection committee composed of twenty-one members: (a) One member appointed by the governor; (b) the assistant secretary responsible for planning from the department of transportation, the assistant secretary responsible for program development from the department of transportation, the assistant secretary responsible for marine transportation from the department of transportation, and the assistant secretary responsible for local programs from the department of transportation; (c) one representative from a transit system in an urbanized area with a population over two hundred thousand and one representative from a rural or small urban transit system in an area with a population less than two hundred thousand; (d) one member representing the ports; (e) one member representing nonmotorized transportation; (f) one mayor or member of a city legislative authority representing cities with populations over twenty thousand and currently a member of a metropolitan planning organization

board; (g) one mayor or member of a city legislative authority representing cities and currently a member of a transit board; (h) one mayor or member of a city legislative authority representing cities with populations under twenty thousand; (i) chief city engineer, public works director, or other city employee with responsibility for public works activity; (j) one city planner; (k) one county executive or member of a county legislative authority representing counties with populations over one hundred twenty-five thousand and currently a member of a metropolitan planning organization board; (l) one county executive or member of a county legislative authority representing counties and currently a member of a transit board; (m) one county executive or member of a county legislative authority representing counties with populations under one hundred twenty-five thousand; (n) one county public works director, or county engineer or executive director for the county road administration board; (o) one county planner; (p) the executive director of the transportation improvement board; and (q) one member representing special needs transportation.

(2) All appointments of counties, cities, transit systems, and ports shall be made by the governor from a recommendation of an individual for each position submitted from their respective state-wide associations: The Washington association of counties, the association of Washington cities, the Washington state transit association, the community transportation association of the northwest, and the Washington public ports association. The nonmotorized transportation member shall be appointed by the committee, using a public selection process. To the extent possible, the committee shall be broadly diverse in its representation, particularly with regard to geographic balance.

(3) Initial appointments shall be made no later than July 1, 1993, except for the nonmotorized representative who shall be appointed by September 1, 1993. The terms of appointment shall be for four years except that for initial appointments, the governor shall adjust term lengths to ensure that members' terms are staggered. In case of a vacancy the appointment shall be made by the appointing authority. A vacancy shall be deemed to have occurred on the committee when any member elected to public office leaves that office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatever reason.

(4) The committee shall elect a chair from among its members for a two-year term.

**NEW SECTION.** Sec. 5. (1)(a) The multimodal transportation programs and projects selection committee is authorized and responsible for the final selection of programs and projects funded from the central Puget Sound public transportation account; public transportation systems account; high capacity transportation account; and the intermodal surface transportation and efficiency act of 1991, surface transportation program, state-wide competitive.

(b) The committee may establish subcommittees of the full committee as well as technical advisory committees to carry out the mandates of this chapter.

(2)(a) Expenses of the committee, including administrative expenses for managing the program, shall be paid from the transportation fund.

(b) Members of the committee shall receive no compensation for their services on the committee, but shall be reimbursed for travel expenses incurred while attending meetings of the committee or while engaged on other business of the committee when authorized by the committee in accordance with RCW 43.03.050 and 43.03.060.

**NEW SECTION.** Sec. 6. (1) The multimodal transportation programs and projects selection committee shall select programs and projects based on a competitive process consistent with the mandates governing each account or source of funds. The competition shall be consistent with the following criteria:

- (a) Local, regional, and state transportation plans;
- (b) Local transit development plans; and
- (c) Local comprehensive land use plans.

(2) The following criteria shall be considered by the committee in selecting programs and projects:

(a) Objectives of the growth management act, the high capacity transportation act, the commute trip reduction act, transportation demand management programs, federal and state air quality requirements, and federal Americans with disabilities act and related state accessibility requirements; and

(b) Energy efficiency issues, freight and goods movement as related to economic development, regional significance, rural isolation, the leveraging of other funds including funds administered by this committee, and safety and security issues.

(3) The committee shall determine the appropriate level of local match required for each program and project based on the source of funds.

**NEW SECTION.** Sec. 7. The department of transportation shall be responsible for providing staff support to the multimodal transportation programs and projects selection committee which shall be paid from the transportation fund and include, but not be limited to: (1) Assisting the committee in determining short and long-term funding needs; (2) assisting the committee in developing a selection process that adheres to criteria set in statute and other criteria set by the committee; (3) administering grants and ensuring that contracts are executed in a timely manner; (4) distribution of funds and status of accounts; (5) staff recommendations on policy and programs as appropriate; and (6) submitting to the legislative transportation committee an initial report no later than October 15, 1993, that includes but is not limited to: A committee membership roster, schedule of committee activities for the year, an explicit list of criteria for program and project selection created by the committee, program and project grants including projected grant duration, and the proposed process and procedures to be incorporated into the Washington state administrative code. Every year thereafter an annual report shall be submitted to the legislative

transportation committee no later than January 1 that summarizes the activities of the committee.

**NEW SECTION. Sec. 8.** The multimodal transportation programs and projects selection committee shall convene no later than August 1, 1993, and shall review the revenues available to the accounts under the committee's jurisdiction and adopt rules and procedures governing the program and project selection process that are consistent with state and federal requirements. The committee shall adopt procedures to be incorporated into the Washington administrative code.

Applicants shall submit applications for programs and projects to the committee for consideration no later than September 1, 1993.

The committee shall review and select applications, and award funds, based upon criteria common among fund sources or unique to each fund source, no later than November 1, 1993.

The committee shall be responsible for establishing subsequent annual schedules to ensure compliance with the responsibilities outlined in this chapter and with consideration to other program and project selection timelines.

**NEW SECTION. Sec. 9.** Sections 3 through 8 of this act shall constitute a new chapter in Title 47 RCW.

**NEW SECTION. Sec. 10.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 21, 1993.

Passed the Senate April 14, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 394

[Engrossed Substitute House Bill 2067]

### STATE AGENCY COMMUTE TRIP REDUCTION PROGRAMS

Effective Date: 7/25/93

AN ACT Relating to state agency commute trip reduction programs; amending RCW 43.41.140; reenacting and amending RCW 46.08.172; adding new sections to chapter 43.01 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that reducing the number of commute trips to work is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. The legislature intends that state agencies shall assume a leadership role in implementing programs to reduce vehicle miles traveled and single-occupant vehicle commuting, under RCW 70.94.521 through 70.94.551.

The legislature has established and directed an interagency task force to consider mechanisms for funding state agency commute trip reduction programs; and to consider and recommend policies for employee incentives for commuting by other than single-occupant vehicles, and policies for the use of state-owned vehicles.

It is the purpose of this act to provide state agencies with the authority to provide employee incentives, including subsidies for use of high occupancy vehicles to meet commute trip reduction goals, and to remove existing statutory barriers for state agencies to use public funds, including parking revenue, to operate, maintain, lease, or construct parking facilities at state-owned and leased facilities, to reduce parking subsidies, and to support commute trip reduction programs.

NEW SECTION. Sec. 2. A new section is added to chapter 43.01 RCW to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Guaranteed ride home" means an assured ride home for commuters participating in a commute trip reduction program who are not able to use their normal commute mode because of personal emergencies.

(2) "Pledged" means parking revenue designated through any means, including moneys received from the natural resource building, which is used for the debt service payment of bonds issued for parking facilities.

Sec. 3. RCW 43.41.140 and 1979 c 151 s 119 are each amended to read as follows:

Pursuant to policies and regulations promulgated by the office of financial management (~~(after consultation with and approval by the automotive policy board)~~), an elected state officer or (~~(his)~~) delegate or a state agency director or (~~(his)~~) delegate may permit an employee (~~(commuting)~~) to commute in a state-owned or leased vehicle (~~(only)~~) if such travel is on official business, as determined in accordance with RCW 43.41.130, and is determined to be economical and advantageous to the state, or as part of a commute trip reduction program as required by RCW 70.94.551.

Sec. 4. RCW 46.08.172 and 1991 sp.s. c 31 s 12 and 1991 sp.s. c 13 s 41 are each reenacted and amended to read as follows:

~~((There is hereby established an account in the state treasury to be known as the "state capitol vehicle parking account".))~~ The director of the department of general administration shall establish equitable and consistent parking rental fees for state-owned or leased property, to be charged to employees, visitors, clients, service providers, and others, that reflect the legislature's intent to reduce state subsidization of parking. The department shall solicit representatives from affected state agencies, employees, and state employee bargaining units to meet as regional committees. These regional committees will advise the director on parking rental fees, taking into account the market rate of comparable, privately owned rental parking in each region. In the event that such fees become part of



a collective bargaining agreement and there is a conflict between the agency and the collective bargaining unit, the terms of the collective bargaining agreement shall prevail. All fees shall take into account the market rate of comparable privately owned rental parking, as determined by the director. ~~((All unpledged parking rental income collected by the department of general administration from rental of parking space on the capitol grounds and the east capitol site shall be deposited in the "state capitol vehicle parking account".))~~ However, parking rental fees are not to exceed the local market rate of comparable privately owned rental parking.

The director may delegate the responsibility for the collection of parking fees to other agencies of state government when cost-effective.

~~((The "state capitol vehicle parking account" shall be used to pay costs incurred in the operation, maintenance, regulation and enforcement of vehicle parking and parking facilities.))~~

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.01 RCW to read as follows:

There is hereby established an account in the state treasury to be known as the "state capitol vehicle parking account." All parking rental income collected from rental of parking space at state-owned or leased property shall be deposited in the "state capitol vehicle parking account." Revenue deposited in the "state capitol vehicle parking account" shall be first applied to pledged purposes. Unpledged parking revenues deposited in the "state capitol vehicle parking account" may be used to:

(1) Pay costs incurred in the operation, maintenance, regulation, and enforcement of vehicle parking and parking facilities on state-owned or leased properties;

(2) Support the lease costs and/or capital investment costs of vehicle parking and parking facilities at agency-owned and leased facilities off the capitol campus; and

(3) Support commute trip reduction programs under RCW 70.94.521 through 70.94.551.

Distribution of funds from the "state capitol vehicle parking account" are subject to appropriation by the legislature and will be made by the office of financial management after considering recommendations from the director of general administration and the interagency task force for commute trip reduction, under RCW 70.94.551.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.01 RCW to read as follows:

State agencies may, subject to appropriation and under the internal revenue code rules, use public funds to financially assist agency-approved incentives for alternative commute modes, including but not limited to carpools, vanpools, purchase of transit and ferry passes, and guaranteed ride home programs, if the financial assistance is an element of the agency's commute trip reduction

program as required under RCW 70.94.521 through 70.94.551. This section does not permit any payment for the use of state-owned vehicles for commuter ride sharing.

**NEW SECTION.** Sec. 7. A new section is added to chapter 43.01 RCW to read as follows:

All state higher education institutions are exempt from section 5 of this act.

Passed the House April 24, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 395

[Substitute House Bill 1013]

### UNIFORM COMMERCIAL CODE—BULK SALES ARTICLE REPEALED

Effective Date: 7/25/93

AN ACT Relating to the Uniform Commercial Code—Bulk Sales; amending RCW 62A.1-105 and 62A.2-403; and repealing RCW 62A.6-101, 62A.6-102, 62A.6-103, 62A.6-104, 62A.6-105, 62A.6-106, 62A.6-107, 62A.6-108, 62A.6-109, 62A.6-110, 62A.6-111, and 62A.9-111.

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

**NEW SECTION.** Sec. 6-101 The following acts or parts of acts are repealed:

- (1) RCW 62A.6-101 and 1965 ex.s. c 157 s 6-101;
- (2) RCW 62A.6-102 and 1967 c 114 s 2 & 1965 ex.s. c 157 s 6-102;
- (3) RCW 62A.6-103 and 1965 ex.s. c 157 s 6-103;
- (4) RCW 62A.6-104 and 1975 1st ex.s. c 278 s 33 & 1965 ex.s. c 156 s 6-104;
- (5) RCW 62A.6-105 and 1971 c 23 s 1 & 1965 ex.s. c 157 s 6-105;
- (6) RCW 62A.6-106 and 1965 ex.s. c 157 s 6-106;
- (7) RCW 62A.6-107 and 1975 1st ex.s. c 278 s 34 & 1965 ex.s. c 157 s 6-107;
- (8) RCW 62A.6-108 and 1965 ex.s. c 157 s 6-108;
- (9) RCW 62A.6-109 and 1967 c 114 s 3 & 1965 ex.s. c 157 s 6-109;
- (10) RCW 62A.6-110 and 1965 ex.s. c 157 s 6-110;
- (11) RCW 62A.6-111 and 1965 ex.s. c 157 s 6-111; and
- (12) RCW 62A.9-111 and 1965 ex.s. c 157 s 9-111.

**Sec. 6-102.** RCW 62A.1-105 and 1981 c 41 s 1 are each amended to read as follows:

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern

their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

~~((Bulk transfers subject to the Article on Bulk Transfers. RCW 62A.6-402.))~~

Applicability of the Article on Investment Securities. RCW 62A.8-106.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103.

**Sec. 6-103.** RCW 62A.2-403 and 1967 c 114 s 8 are each amended to read as follows:

(1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9)~~((Bulk Transfers (Article 6)))~~ and Documents of Title (Article 7).

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 396

[Engrossed Substitute House Bill 1059]

## WEAPONS POSSESSION IN COURT FACILITIES RESTRICTED

Effective Date: 7/25/93

AN ACT Relating to the possession of weapons in court facilities; amending RCW 9.41.300; and prescribing penalties.

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

**Sec. 1.** RCW 9.41.300 and 1985 c 428 s 2 are each amended to read as follows:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a ~~((firearm))~~ weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020, (iii) held for extradition or as a material witness, or (iv) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) ~~((A courtroom or judge's chamber, while either is being used for any judicial proceeding. This does not include common areas of egress and ingress of the courthouse))~~ Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for short firearms and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for

evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public; or

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age.

(2) Notwithstanding RCW 9.41.290, cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any firearm in the possession of a person licensed under RCW 9.41.070; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(4) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel; or

(c) Security personnel while engaged in official duties.

(5) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

~~(6) ((Subsection (1)(b) of this section does not apply to a judge or court employee or to any person licensed under RCW 9.41.070 who, before entering the restricted area, directly and promptly proceeds to the court administrator or the administrator's designee and obtains written permission to possess the firearm.~~

~~(7))~~ Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

~~((8))~~ (7) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

~~((9))~~ (8) Any person violating subsection (1) of this section is guilty of a misdemeanor.

(9) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250.

Passed the House April 19, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 397

[Engrossed House Bill 1067]

### JAIL EMPLOYEES' COLLECTIVE BARGAINING—INCLUSION IN DEFINITION OF "UNIFORMED PERSONNEL"

Effective Date: 7/25/93

AN ACT Relating to public employee collective bargaining; amending RCW 41.56.460; and reenacting and amending RCW 41.56.030.

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

**Sec. 1.** RCW 41.56.030 and 1992 c 36 s 2 and 1991 c 363 s 119 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter as designated by RCW 41.56.020, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. In the case of the Washington state patrol, "collective bargaining" shall not include wages and wage-related matters.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 ((as now or hereafter amended,)) of cities with a population of fifteen thousand or more or law enforcement officers employed by the governing body of any county with a population of seventy thousand or more((, or (€)); (b) fire fighters as that term is defined in RCW 41.26.030((, as now or hereafter amended)); or (c) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates.

**Sec. 2.** RCW 41.56.460 and 1988 c 110 s 1 are each amended to read as follows:

In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c)(i) For employees listed in RCW 41.56.030(7) (a) and (c) and 41.56.495, comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(ii) For employees listed in RCW 41.56.030(7)(b), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However,

when an adequate number of comparable employers exists within the state of Washington, other west coast employers shall not be considered;

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 398

[Engrossed House Bill 1081]

### PUBLIC EMPLOYEE COLLECTIVE BARGAINING—DEFINITION OF "UNIFORMED PERSONNEL" EXPANDED

**Effective Date:** 7/25/93 - Except Sections 3 & 5 which take effect on 7/1/95; & Sections 1, 2, 4, & 6 which take effect on 5/15/93

AN ACT Relating to public employee collective bargaining; amending RCW 41.56.460 and 41.56.123; reenacting and amending RCW 41.56.030; adding a new section to chapter 41.56 RCW; repealing RCW 41.56.460 and 41.56.495; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 41.56.030 and 1992 c 36 s 2 and 1991 c 363 s 119 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter as designated by RCW 41.56.020, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public



employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. In the case of the Washington state patrol, "collective bargaining" shall not include wages and wage-related matters.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7)(a) Until July 1, 1995, "uniformed personnel" means ((~~(a)~~)): (i) Law enforcement officers as defined in RCW 41.26.030 ((~~as now or hereafter amended~~)) of cities with a population of fifteen thousand or more or law enforcement officers employed by the governing body of any county with a population of seventy thousand or more((~~, or (b)~~)); (ii) fire fighters as that term is defined in RCW 41.26.030((~~as now or hereafter amended~~)); (iii) security forces established under RCW 43.52.520; (iv) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (v) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (vi) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(b) Beginning on July 1, 1995, "uniformed personnel" means: (i) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of seven thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of thirty-five thousand or more; (ii) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (iii) security forces established under RCW 43.52.520; (iv) fire fighters as that term is defined in RCW 41.26.030; (v) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (vi) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (vii)

employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

**Sec. 2.** RCW 41.56.460 and 1988 c 110 s 1 are each amended to read as follows:

In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c)(i) For employees listed in RCW 41.56.030(7)(a) (~~and 41.56.495~~) (i) and (iii), comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(ii) For employees listed in RCW 41.56.030(7)(~~(b)~~)(a) (ii) and (iv) through (vi), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers shall not be considered;

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW to read as follows:

In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(1) The constitutional and statutory authority of the employer;

(2) Stipulations of the parties;

(3)(a) For employees listed in RCW 41.56.030(7)(b) (i) through (iii), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(b) For employees listed in RCW 41.56.030(7)(b) (iv) through (vii), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;

(4) The average consumer prices for goods and services, commonly known as the cost of living;

(5) Changes in any of the circumstances under subsections (1) through (4) of this section during the pendency of the proceedings; and

(6) Such other factors, not confined to the factors under subsections (1) through (5) of this section, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(b)(i) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

**Sec. 4.** RCW 41.56.123 and 1989 c 46 s 1 are each amended to read as follows:

(1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.

(3) This section shall not apply to the following:

(a) Bargaining units covered by RCW 41.56.430 et seq. for factfinding and interest arbitration;

(b) Collective bargaining agreements authorized by chapter 53.18 RCW; or

(c) ~~((Security forces established under RCW 43.52.520; or~~

~~(d))~~ Collective bargaining agreements authorized by chapter 54.04 RCW.

(4) This section shall not apply to collective bargaining agreements in effect or being bargained on July 23, 1989.

NEW SECTION. **Sec. 5.** RCW 41.56.460 and 1988 c 110 s 1, 1987 c 521 s 2, 1983 c 287 s 4, 1979 ex.s. c 184 s 3, & 1973 c 131 s 5 are each repealed.

NEW SECTION. **Sec. 6.** RCW 41.56.495 and 1988 c 110 s 3 & 1985 c 150 s 1 are each repealed.

NEW SECTION. **Sec. 7.** (1) Sections 3 and 5 of this act shall take effect July 1, 1995.

(2) Sections 1, 2, 4, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 399**

[Substitute House Bill 1100]

**SOLID WASTE TRANSPORTATION—SECURING OR COVERING LOAD  
TO PREVENT SPILLAGE REQUIRED**

**Effective Date:** 7/25/93

AN ACT Relating to the containment of waste materials; and adding a new section to chapter 70.93 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.93 RCW to read as follows:

(1) By January 1, 1994, each county or city with a staffed transfer station or landfill in its jurisdiction shall adopt an ordinance to reduce litter from vehicles. The ordinance shall require the operator of a vehicle transporting solid waste to a staffed transfer station or landfill to secure or cover the vehicle's waste in a manner that will prevent spillage. The ordinance may provide exemptions for vehicle operators transporting waste that is unlikely to spill from a vehicle.

The ordinance shall, in the absence of an exemption, require a fee, in addition to other landfill charges, for a person arriving at a staffed landfill or transfer station without a cover on the vehicle's waste or without the waste secured.

(2) The fee collected under subsection (1) of this section shall be deposited, no less often than quarterly, with the city or county in which the landfill or transfer station is located.

(3) A vehicle transporting sand, dirt, or gravel in compliance with the provisions of RCW 46.61.655 shall not be required to secure or cover a load pursuant to ordinances adopted under this section.

Passed the House April 19, 1993.  
 Passed the Senate April 8, 1993.  
 Approved by the Governor May 15, 1993.  
 Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 400

[Substitute House Bill 1103]

### MODEL TRAFFIC ORDINANCE—STATUS CHANGED FROM STATUTE TO RULE

**Effective Date:** 7/25/93 - Except Sections 3 through 5 which take effect on 5/15/93; Sections 1 & 2 which take effect on 7/1/93; & Section 6 which takes effect on 7/1/94

AN ACT Relating to the model traffic ordinance; amending RCW 46.90.005, 46.90.010, 46.90.406, and 46.90.427; reenacting and amending RCW 46.90.300; repealing RCW 46.90.100, 46.90.103, 46.90.106, 46.90.109, 46.90.112, 46.90.115, 46.90.118, 46.90.121, 46.90.124, 46.90.127, 46.90.130, 46.90.133, 46.90.136, 46.90.139, 46.90.142, 46.90.145, 46.90.148, 46.90.151, 46.90.154, 46.90.157, 46.90.160, 46.90.163, 46.90.166, 46.90.169, 46.90.172, 46.90.175, 46.90.178, 46.90.181, 46.90.184, 46.90.187, 46.90.190, 46.90.200, 46.90.205, 46.90.210, 46.90.215, 46.90.220, 46.90.225, 46.90.230, 46.90.235, 46.90.240, 46.90.245, 46.90.250, 46.90.255, 46.90.260, 46.90.265, 46.90.270, 46.90.275, 46.90.300, 46.90.335, 46.90.340, 46.90.345, 46.90.375, 46.90.400, 46.90.403, 46.90.406, 46.90.409, 46.90.412, 46.90.415, 46.90.418, 46.90.421, 46.90.427, 46.90.430, 46.90.433, 46.90.436, 46.90.439, 46.90.442, 46.90.445, 46.90.448, 46.90.451, 46.90.454, 46.90.457, 46.90.460, 46.90.463, 46.90.466, 46.90.469, 46.90.472, 46.90.475, 46.90.478, 46.90.481, 46.90.500, 46.90.505, 46.90.510, 46.90.515, 46.90.520, 46.90.525, 46.90.530, 46.90.535, 46.90.540, 46.90.545, 46.90.550, 46.90.555, 46.90.560, 46.90.565, 46.90.600, 46.90.610, 46.90.620, 46.90.630, 46.90.640, 46.90.650, 46.90.660, 46.90.700, 46.90.705, 46.90.710, 46.90.720, 46.90.730, 46.90.740, 46.90.900, 46.90.910, 46.90.920, 46.90.930, 46.90.940, and 46.90.950; providing effective dates; and declaring an emergency.

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

**Sec. 1.** RCW 46.90.005 and 1975 1st ex.s. c 54 s 1 are each amended to read as follows:

The purpose of this chapter is to encourage highway safety and uniform traffic laws by ~~((providing))~~ authorizing the department of licensing to adopt a comprehensive compilation of sound, uniform traffic laws to serve as a guide which local authorities may adopt by reference or any part thereof, including all future amendments or additions thereto. Any local authority which adopts ~~((this chapter))~~ that body of rules by reference may at any time exclude any section or sections ~~((from this chapter which))~~ of those rules that it does not desire to include in its local traffic ordinance. ~~((This chapter is))~~ The rules are not intended to deny any local authority its legislative power, but rather to enhance safe and efficient movement of traffic throughout the state by having current, uniform traffic laws available.

**Sec. 2.** RCW 46.90.010 and 1975 1st ex.s. c 54 s 2 are each amended to read as follows:

In consultation with the chief of the Washington state patrol and the traffic safety commission, the director shall adopt in accordance with chapter 34.05 RCW a model traffic ordinance for use by any city, town, or county. The addition of any new section to, or amendment or repeal of any section in, ~~((this chapter by the legislature shall be))~~ the model traffic ordinance is deemed to

amend any city, town, or county, ordinance which has adopted by reference (~~this chapter~~) the model traffic ordinance or any part thereof, and it shall not be necessary for the legislative authority of any city, town, or county to take any action with respect to such addition, amendment, or repeal notwithstanding the provisions of RCW 35.21.180, 35A.12.140, 35A.13.180, and 36.32.120(7).

**Sec. 3.** RCW 46.90.300 and 1991 c 293 s 9, 1991 c 293 s 8, 1991 c 118 s 2, and 1991 c 118 s 1 are each reenacted and amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.316, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.338, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.420, 46.20.430, 46.20.435, 46.20.500, 46.20.510, 46.20.550, 46.20.750, 46.25.010, 46.25.020, 46.25.030, 46.25.040, 46.25.050, 46.25.110, 46.25.120, 46.25.170, 46.29.605, 46.30.010, 46.30.020, 46.30.030, 46.30.040, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.44.010, 46.44.015, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.105, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.79.120, and 46.80.010.

**Sec. 4.** RCW 46.90.406 and 1991 c 118 s 3 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW

46.55.010, 46.55.020, 46.55.030, 46.55.035, 46.55.037, 46.55.040, 46.55.050, 46.55.060, 46.55.063, 46.55.070, 46.55.080, 46.55.085, 46.55.090, 46.55.100, 46.55.110, 46.55.113, 46.55.120, 46.55.130, 46.55.140, 46.55.150, 46.55.160, 46.55.170, 46.55.230, 46.55.240, 46.55.910, 46.61.005, 46.61.015, 46.61.020, 46.61.021, 46.61.022, 46.61.025, 46.61.030, 46.61.035, 46.61.050, 46.61.055, 46.61.060, 46.61.065, 46.61.070, 46.61.072, 46.61.075, and 46.61.080.

**Sec. 5.** RCW 46.90.427 and 1988 c 24 s 3 are each amended to read as follows:

The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.300, 46.61.305, 46.61.310, 46.61.315, 46.61.340, 46.61.345, 46.61.350, 46.61.355, 46.61.365, 46.61.370, 46.61.371, 46.61.372, 46.61.375, 46.61.385, 46.61.400, 46.61.415, 46.61.425, 46.61.427, 46.61.428, 46.61.435, 46.61.440, 46.61.445, 46.61.450, 46.61.455, 46.61.460, 46.61.465, 46.61.470, 46.61.475, 46.61.500, 46.61.502, 46.61.504, 46.61.506, 46.61.515, 46.61.517, 46.61.519, 46.61.5191, 46.61.5195, 46.61.525, 46.61.530, 46.61.535, 46.61.540, 46.61.560, 46.61.570, and 46.61.575.

**NEW SECTION.** **Sec. 6.** The following acts or parts of acts are each repealed:

- (1) RCW 46.90.100 and 1975 1st ex.s. c 54 s 3;
- (2) RCW 46.90.103 and 1975 1st ex.s. c 54 s 4;
- (3) RCW 46.90.106 and 1975 1st ex.s. c 54 s 5;
- (4) RCW 46.90.109 and 1975 1st ex.s. c 54 s 6;
- (5) RCW 46.90.112 and 1975 1st ex.s. c 54 s 7;
- (6) RCW 46.90.115 and 1975 1st ex.s. c 54 s 8;
- (7) RCW 46.90.118 and 1975 1st ex.s. c 54 s 9;
- (8) RCW 46.90.121 and 1979 c 158 s 203 & 1975 1st ex.s. c 54 s 10;
- (9) RCW 46.90.124 and 1975 1st ex.s. c 54 s 11;
- (10) RCW 46.90.127 and 1975 1st ex.s. c 54 s 12;
- (11) RCW 46.90.130 and 1975 1st ex.s. c 54 s 13;
- (12) RCW 46.90.133 and 1975 1st ex.s. c 54 s 14;
- (13) RCW 46.90.136 and 1975 1st ex.s. c 54 s 15;
- (14) RCW 46.90.139 and 1975 1st ex.s. c 54 s 16;
- (15) RCW 46.90.142 and 1975 1st ex.s. c 54 s 17;
- (16) RCW 46.90.145 and 1975 1st ex.s. c 54 s 18;
- (17) RCW 46.90.148 and 1975 1st ex.s. c 54 s 19;
- (18) RCW 46.90.151 and 1975 1st ex.s. c 54 s 20;
- (19) RCW 46.90.154 and 1975 1st ex.s. c 54 s 21;
- (20) RCW 46.90.157 and 1975 1st ex.s. c 54 s 22;
- (21) RCW 46.90.160 and 1975 1st ex.s. c 54 s 23;
- (22) RCW 46.90.163 and 1975 1st ex.s. c 54 s 24;
- (23) RCW 46.90.166 and 1975 1st ex.s. c 54 s 25;

- (24) RCW 46.90.169 and 1975 1st ex.s. c 54 s 26;
- (25) RCW 46.90.172 and 1975 1st ex.s. c 54 s 27;
- (26) RCW 46.90.175 and 1975 1st ex.s. c 54 s 28;
- (27) RCW 46.90.178 and 1975 1st ex.s. c 54 s 29;
- (28) RCW 46.90.181 and 1975 1st ex.s. c 54 s 30;
- (29) RCW 46.90.184 and 1975 1st ex.s. c 54 s 31;
- (30) RCW 46.90.187 and 1975 1st ex.s. c 54 s 32;
- (31) RCW 46.90.190 and 1975 1st ex.s. c 54 s 33;
- (32) RCW 46.90.200 and 1983 c 30 s 1, 1980 c 65 s 1, & 1975 1st ex.s. c 54 s 34;
- (33) RCW 46.90.205 and 1975 1st ex.s. c 54 s 35;
- (34) RCW 46.90.210 and 1975 1st ex.s. c 54 s 36;
- (35) RCW 46.90.215 and 1975 1st ex.s. c 54 s 37;
- (36) RCW 46.90.220 and 1975 1st ex.s. c 54 s 38;
- (37) RCW 46.90.225 and 1975 1st ex.s. c 54 s 39;
- (38) RCW 46.90.230 and 1975 1st ex.s. c 54 s 40;
- (39) RCW 46.90.235 and 1975 1st ex.s. c 54 s 41;
- (40) RCW 46.90.240 and 1975 1st ex.s. c 54 s 42;
- (41) RCW 46.90.245 and 1975 1st ex.s. c 54 s 43;
- (42) RCW 46.90.250 and 1975 1st ex.s. c 54 s 44;
- (43) RCW 46.90.255 and 1975 1st ex.s. c 54 s 45;
- (44) RCW 46.90.260 and 1975 1st ex.s. c 54 s 46;
- (45) RCW 46.90.265 and 1975 1st ex.s. c 54 s 47;
- (46) RCW 46.90.270 and 1975 1st ex.s. c 54 s 48;
- (47) RCW 46.90.275 and 1975 1st ex.s. c 54 s 49;
- (48) RCW 46.90.300 and 1993 c . . . s 3 (section 3 of this act), 1991 c 293 s 9, 1991 c 293 s 8, 1991 c 118 s 2, 1991 c 118 s 1, 1989 c 178 s 28, 1988 c 24 s 1, 1987 c 30 s 1, 1986 c 24 s 1, & 1985 c 19 s 1;
- (49) RCW 46.90.335 and 1983 c 3 s 124 & 1975 1st ex.s. c 54 s 52;
- (50) RCW 46.90.340 and 1975 1st ex.s. c 54 s 53;
- (51) RCW 46.90.345 and 1979 ex.s. c 136 s 100 & 1975 1st ex.s. c 54 s 54;
- (52) RCW 46.90.375 and 1975 1st ex.s. c 54 s 60;
- (53) RCW 46.90.400 and 1975 1st ex.s. c 54 s 62;
- (54) RCW 46.90.403 and 1975 1st ex.s. c 54 s 63;
- (55) RCW 46.90.406 and 1993 c . . . s 4 (section 4 of this act), 1991 c 118 s 3, 1988 c 24 s 2, 1986 c 24 s 2, 1980 c 65 s 3, 1977 ex.s. c 60 s 2, & 1975 1st ex.s. c 54 s 64;
- (56) RCW 46.90.409 and 1975 1st ex.s. c 54 s 65;
- (57) RCW 46.90.412 and 1975 1st ex.s. c 54 s 66;
- (58) RCW 46.90.415 and 1977 ex.s. c 60 s 3 & 1975 1st ex.s. c 54 s 67;
- (59) RCW 46.90.418 and 1975 1st ex.s. c 54 s 68;
- (60) RCW 46.90.421 and 1975 1st ex.s. c 54 s 69;



- (61) RCW 46.90.427 and 1993 c . . . s 5 (section 5 of this act), 1988 c 24 s 3, 1985 c 19 s 2, 1984 c 108 s 2, 1982 c 25 s 2, 1980 c 65 s 4, 1977 ex.s. c 60 s 4, & 1975 1st ex.s. c 54 s 71;
- (62) RCW 46.90.430 and 1975 1st ex.s. c 54 s 72;
- (63) RCW 46.90.433 and 1975 1st ex.s. c 54 s 73;
- (64) RCW 46.90.436 and 1975 1st ex.s. c 54 s 74;
- (65) RCW 46.90.439 and 1975 1st ex.s. c 54 s 75;
- (66) RCW 46.90.442 and 1975 1st ex.s. c 54 s 76;
- (67) RCW 46.90.445 and 1975 1st ex.s. c 54 s 77;
- (68) RCW 46.90.448 and 1975 1st ex.s. c 54 s 78;
- (69) RCW 46.90.451 and 1975 1st ex.s. c 54 s 79;
- (70) RCW 46.90.454 and 1975 1st ex.s. c 54 s 80;
- (71) RCW 46.90.457 and 1975 1st ex.s. c 54 s 81;
- (72) RCW 46.90.460 and 1975 1st ex.s. c 54 s 82;
- (73) RCW 46.90.463 and 1987 c 30 s 2 & 1985 c 19 s 3;
- (74) RCW 46.90.466 and 1975 1st ex.s. c 54 s 84;
- (75) RCW 46.90.469 and 1975 1st ex.s. c 54 s 85;
- (76) RCW 46.90.472 and 1975 1st ex.s. c 54 s 86;
- (77) RCW 46.90.475 and 1975 1st ex.s. c 54 s 87;
- (78) RCW 46.90.478 and 1975 1st ex.s. c 54 s 88;
- (79) RCW 46.90.481 and 1984 c 108 s 4, 1980 c 65 s 6, & 1975 1st ex.s. c 54 s 89;
- (80) RCW 46.90.500 and 1975 1st ex.s. c 54 s 90;
- (81) RCW 46.90.505 and 1975 1st ex.s. c 54 s 91;
- (82) RCW 46.90.510 and 1975 1st ex.s. c 54 s 92;
- (83) RCW 46.90.515 and 1975 1st ex.s. c 54 s 93;
- (84) RCW 46.90.520 and 1975 1st ex.s. c 54 s 94;
- (85) RCW 46.90.525 and 1975 1st ex.s. c 54 s 95;
- (86) RCW 46.90.530 and 1975 1st ex.s. c 54 s 96;
- (87) RCW 46.90.535 and 1975 1st ex.s. c 54 s 97;
- (88) RCW 46.90.540 and 1975 1st ex.s. c 54 s 98;
- (89) RCW 46.90.545 and 1975 1st ex.s. c 54 s 99;
- (90) RCW 46.90.550 and 1975 1st ex.s. c 54 s 100;
- (91) RCW 46.90.555 and 1975 1st ex.s. c 54 s 101;
- (92) RCW 46.90.560 and 1979 ex.s. c 136 s 101 & 1975 1st ex.s. c 54 s 102;
- (93) RCW 46.90.565 and 1975 1st ex.s. c 54 s 103;
- (94) RCW 46.90.600 and 1975 1st ex.s. c 54 s 104;
- (95) RCW 46.90.610 and 1975 1st ex.s. c 54 s 105;
- (96) RCW 46.90.620 and 1975 1st ex.s. c 54 s 106;
- (97) RCW 46.90.630 and 1975 1st ex.s. c 54 s 107;
- (98) RCW 46.90.640 and 1975 1st ex.s. c 54 s 108;
- (99) RCW 46.90.650 and 1975 1st ex.s. c 54 s 109;
- (100) RCW 46.90.660 and 1975 1st ex.s. c 54 s 110;

- (101) RCW 46.90.700 and 1992 c 32 s 5, 1988 c 24 s 4, 1980 c 65 s 7, 1977 ex.s. c 60 s 6, & 1975 1st ex.s. c 54 s 111;
- (102) RCW 46.90.705 and 1982 c 25 s 3 & 1980 c 65 s 8;
- (103) RCW 46.90.710 and 1980 c 128 s 15 & 1975 1st ex.s. c 54 s 112;
- (104) RCW 46.90.720 and 1975 1st ex.s. c 54 s 113;
- (105) RCW 46.90.730 and 1975 1st ex.s. c 54 s 114;
- (106) RCW 46.90.740 and 1975 1st ex.s. c 54 s 115;
- (107) RCW 46.90.900 and 1984 c 108 s 5 & 1975 1st ex.s. c 54 s 116;
- (108) RCW 46.90.910 and 1975 1st ex.s. c 54 s 117;
- (109) RCW 46.90.920 and 1975 1st ex.s. c 54 s 118;
- (110) RCW 46.90.930 and 1975 1st ex.s. c 54 s 119;
- (111) RCW 46.90.940 and 1975 1st ex.s. c 54 s 120; and
- (112) RCW 46.90.950 and 1975 1st ex.s. c 54 s 121.

**NEW SECTION. Sec. 7.** (1) Sections 3 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

(2) Sections 1 and 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

(3) Section 6 of this act takes effect July 1, 1994.

Passed the House February 22, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

**CHAPTER 401**

[Engrossed House Bill 1107]

**RIGHT OF WAY FOR TRANSIT VEHICLES**

**Effective Date: 7/25/93**

AN ACT Relating to right of way for transit vehicles; amending RCW 46.37.190; adding a new section to chapter 46.61 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 46.61 RCW to read as follows:

(1) The driver of a vehicle shall yield the right of way to a transit vehicle traveling in the same direction that has signalled and is reentering the traffic flow.

(2) Nothing in this section shall operate to relieve the driver of a transit vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

**Sec. 2.** RCW 46.37.190 and 1987 c 330 s 710 are each amended to read as follows:

(1) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.

(2) Every school bus and private carrier bus shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a "stop" signal upon a background not less than fourteen by eighteen inches displaying the word "stop" in letters of distinctly contrasting colors not less than eight inches high, and shall further be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.

(3) Vehicles operated by public agencies whose law enforcement duties include the authority to stop and detain motor vehicles on the public highways of the state may be equipped with a siren and lights of a color and type designated by the state patrol for that purpose. The state patrol may prohibit the use of these sirens and lights on vehicles other than the vehicles described in this subsection.

(4) The lights described in this section shall not be mounted nor used on any vehicle other than a school bus, a private carrier bus, or an authorized emergency or law enforcement vehicle. Optical strobe light devices shall not be installed or used on any vehicle other than an emergency vehicle authorized by the state patrol ~~(or)~~, a publicly(-)owned law enforcement or emergency vehicle, a department of transportation, city, or county maintenance vehicle, or a public transit vehicle.

(a) An "optical strobe light device" used by emergency vehicles means a strobe light device which emits an optical signal at a specific frequency to a traffic control light enabling the emergency vehicle in which the strobe light device is used to obtain the right of way at intersections.

(b) An "optical strobe light device" used by department of transportation, city, or county maintenance vehicles means a strobe light device that emits an optical signal at a specific frequency to a traffic control light enabling the department of transportation maintenance vehicle in which the strobe light device is used to perform maintenance tests.

(c) An "optical strobe light device" used by public transit vehicles means a strobe light device that emits an optical signal at a specific frequency to a traffic control light enabling the public transit vehicle in which the strobe light device is used to accelerate the cycle of the traffic control light. For the purposes of this section, "public transit vehicle" means vehicles, owned by a governmental entity, with a seating capacity for twenty-five or more persons and used to

provide mass transportation. Public transit vehicles operating an optical strobe light will have second degree priority to emergency vehicles when simultaneously approaching the same traffic control light.

(5) The use of the signal equipment described herein, except the optical strobe light devices used by public transit vehicles and department of transportation, city, or county maintenance vehicles that are not used in conjunction with emergency equipment, shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in RCW 46.61.210, 46.61.370, and 46.61.350.

NEW SECTION. Sec. 3. The state patrol shall adopt rules to implement RCW 46.37.190.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 402

[Engrossed House Bill 1110]

### SEXUALLY AGGRESSIVE YOUTH—EVALUATION AND TREATMENT

Effective Date: 7/25/93

AN ACT Relating to sexually aggressive youth; amending RCW 26.44.020 and 74.13.075; adding a new section to chapter 26.44 RCW; and creating a new section.

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

**Sec. 1.** RCW 26.44.020 and 1988 c 142 s 1 are each amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice (~~podiatry~~) podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Child abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby. An abused child is a child who has been subjected to child abuse or neglect as defined herein: PROVIDED, That this subsection shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety: AND PROVIDED FURTHER, That nothing in this section shall be used to prohibit the reasonable use of corporal punishment as a means of discipline. No parent or guardian shall be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons not able to provide for their own protection through the criminal justice system" shall be defined as those persons over the age of eighteen years who have been found legally incompetent pursuant to chapter 11.88 RCW or found disabled to such a degree pursuant to said chapter, that such protection is indicated: PROVIDED, That no persons reporting injury, abuse, or neglect to an adult dependent person as defined herein shall suffer negative consequences if such a judicial determination of incompetency or disability has not taken place and the person reporting believes in good faith that

the adult dependent person has been found legally incompetent pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes as those acts are defined by state law by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety.

(17) "Developmentally disabled person" means a person who has a disability defined in RCW (~~71.20.016~~) 71A.10.020.

(18) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard the general welfare of such children and shall include investigations of child abuse and neglect reports, including reports regarding child care centers and family child care homes, and the development, management, and provision of or referral to services to ameliorate conditions which endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(19) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

NEW SECTION. **Sec. 2.** A new section is added to chapter 26.44 RCW to read as follows:

(1) If a law enforcement agency receives a complaint that alleges that a child under age twelve has committed a sex offense as defined in RCW 9.94A.030, the agency shall investigate the complaint. If the investigation reveals that probable cause exists to believe that the youth may have committed a sex offense and the child is at least eight years of age, the agency shall refer the case to the proper county prosecuting attorney for appropriate action to determine whether the child may be prosecuted or is a sexually aggressive youth. If the child is less than eight years old, the law enforcement agency shall refer the case to the department.

(2) If the prosecutor or a judge determines the child cannot be prosecuted for the alleged sex offense because the child is incapable of committing a crime as provided in RCW 9A.04.050 and the prosecutor believes that probable cause exists to believe that the child engaged in acts that would constitute a sex offense, the prosecutor shall refer the child as a sexually aggressive youth to the department. The prosecutor shall provide the department with an affidavit stating that the prosecutor has determined that probable cause exists to believe that the juvenile has committed acts that could be prosecuted as a sex offense but the case is not being prosecuted because the juvenile is incapable of committing a crime as provided in RCW 9A.04.050.

(3) The department shall investigate any referrals that allege that a child is a sexually aggressive youth. The purpose of the investigation shall be to determine whether the child is abused or neglected, as defined in this chapter, and whether the child or the child's parents are in need of services or treatment. The department may offer appropriate available services and treatment to a sexually aggressive youth and his or her parents or legal guardians as provided in RCW 74.13.075 and may refer the child and his or her parents to appropriate treatment and services available within the community. If the parents refuse to accept or fail to obtain appropriate treatment or services under circumstances that indicate that the refusal or failure is child abuse or neglect, as defined in this chapter, the department may pursue a dependency action as provided in chapter 13.34 RCW.

(4) Nothing in this section shall affect the responsibility of a law enforcement agency to report incidents of abuse or neglect as required in RCW 26.44.030(5).

**Sec. 3.** RCW 74.13.075 and 1990 c 3 s 305 are each amended to read as follows:

(1) For the purposes of funds appropriated for the treatment of ~~((at-risk juvenile sex offenders, "at-risk juvenile sex offenders))~~ sexually aggressive youth, the term "sexually aggressive youth" means those juveniles who:

~~((a))~~ (a) Are in the care and custody of the state ~~((who))~~ and:  
~~((i))~~ (i) Have been abused; and  
~~((b))~~ (ii) Have committed a sexually aggressive or other violent act that is sexual in nature; or

~~((e))~~ (b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

(a) The age of the juvenile;

- (b) The extent and type of abuse to which the juvenile has been subjected;
- (c) The juvenile's past conduct;
- (d) The benefits that can be expected from the treatment; (~~and~~)
- (e) The cost of the treatment; and
- (f) The ability of the juvenile's parent or guardian to pay for the treatment.

NEW SECTION. Sec. 4. The secretary of the department of social and health services is authorized to transfer surplus, unused treatment funds from the civil commitment center operated under chapter 71.09 RCW to the division of children and family services to provide treatment services for sexually aggressive youth.

Passed the House April 19, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 403

[Substitute House Bill 1129]

### COMMERCIAL MOTOR VEHICLE INSPECTION

Effective Date: 7/25/93

AN ACT Relating to commercial motor vehicle inspection; amending RCW 46.32.010, 46.32.020, and 46.44.105; adding a new section to chapter 46.32 RCW; and repealing RCW 46.44.100.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.32 RCW to read as follows:

For the purpose of this chapter "commercial motor vehicle" means a self-propelled or towed vehicle designed or used to transport passengers or property, if the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds;
  - (2) Is designed to transport sixteen or more passengers, including the driver;
- or
- (3) Is transporting hazardous materials and is required to be identified by a placard in accordance with 49 C.F.R. Sec. 172.500-.560 (1991).

A recreational vehicle used for noncommercial purposes is not considered a commercial motor vehicle. "Recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose.

Sec. 2. RCW 46.32.010 and 1986 c 123 s 1 are each amended to read as follows:

- (1) The chief of the Washington state patrol may operate, maintain, or designate, throughout the state of Washington, stations for the inspection of



school buses and private carrier buses, with respect to vehicle equipment, drivers' qualifications, and hours of service and to set reasonable times when inspection of vehicles shall be performed.

(2) ~~((The inspection of private, common, and contract carriers with respect to vehicle equipment, drivers' qualifications, and hours of service shall be done in conjunction with weight enforcement under RCW 46.44.100))~~ The state patrol may inspect a commercial motor vehicle while the vehicle is operating on the public highways of this state with respect to vehicle equipment, hours of service, and driver qualifications.

(3) It is unlawful for any vehicle required to be inspected to be operated over the public highways of this state unless and until it has been approved periodically as to equipment.

(4) Inspections shall be performed by a responsible employee of the chief of the Washington state patrol, who shall be duly authorized and who shall have authority to secure and withhold, with written notice to the director of licensing, the certificate of license registration and license plates of any vehicle found to be defective in equipment so as to be unsafe or unfit to be operated upon the highways of this state, and it shall be unlawful for any person to operate such vehicle unless and until it has been placed in a condition satisfactory to pass a subsequent equipment inspection. The police officer in charge of such vehicle equipment inspection shall grant to the operator of such defective vehicle the privilege to move such vehicle to a place for repair under such restrictions as may be reasonably necessary.

(5) In the event any insignia, sticker, or other marker is adopted to be displayed upon vehicles in connection with the inspection of vehicle equipment, it shall be displayed as required by the rules of the chief of the Washington state patrol, and it is a traffic infraction for any person to mutilate, destroy, remove, or otherwise interfere with the display thereof.

(6) It is a traffic infraction for any person to refuse to have his motor vehicle examined as required by the chief of the Washington state patrol, or, after having had it examined, to refuse to place an insignia, sticker, or other marker, if issued, upon the vehicle, or fraudulently to obtain any such insignia, sticker, or other marker, or to refuse to place his motor vehicle in proper condition after having had it examined, or in any manner, to fail to conform to the provisions of this chapter.

(7) It is a traffic infraction for any person to perform false or improvised repairs, or repairs in any manner not in accordance with acceptable and customary repair practices, upon a motor vehicle.

**Sec. 3.** RCW 46.32.020 and 1986 c 123 s 2 are each amended to read as follows:

The chief of the Washington state patrol may adopt reasonable rules regarding types of vehicles to be inspected, inspection criteria, times for the inspection of vehicle equipment, drivers' qualifications, hours of service, and all

other matters with respect to the conduct of vehicle equipment and driver inspections.

The chief of the Washington state patrol shall prepare and furnish such stickers, tags, record and report forms, stationery, and other supplies as shall be deemed necessary. The chief of the Washington state patrol is empowered to appoint and employ such assistants as he may consider necessary and to fix hours of employment and compensation.

**Sec. 4.** RCW 46.44.105 and 1990 c 217 s 1 are each amended to read as follows:

(1) Violation of any of the provisions of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, and 46.44.095, or failure to obtain a permit as provided by RCW 46.44.090 and 46.44.095, or misrepresentation of the size or weight of any load or failure to follow the requirements and conditions of a permit issued hereunder is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed three cents for each pound of excess weight. Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court shall secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in section 1 of this act, other than the

driver of a bus as defined in section 1(2) of this act, to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined five hundred dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "excess weight" means the poundage in excess of the maximum gross weight prescribed by RCW 46.44.041 and 46.44.042 plus the weights allowed by RCW 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under the provisions of subsections (1) and (2) of this section the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the

action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095 as now or hereafter amended, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(11) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(12) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section.

NEW SECTION. **Sec. 5.** RCW 46.44.100 and 1971 ex.s. c 148 s 2, 1967 c 32 s 52, & 1961 c 12 s 46.44.100 are each repealed.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 404

[Substitute House Bill 1219]

### PUBLIC WORKS ADMINISTRATION ACCOUNT

Effective Date: 7/1/93

AN ACT Relating to creating the public works administration account; amending RCW 39.12.070 and 39.12.042; adding a new section to chapter 39.12 RCW; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 39.12.070 and 1982 1st ex.s. c 38 s 1 are each amended to read as follows:

The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay

prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. The fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. On the fifteenth day of the first month of each quarterly period, an amount equalling thirty percent of the revenues received into the public works administration account shall be transferred into the general fund. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation ((to carry out the activities specified in this section)) to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be no greater than twenty-five dollars.

NEW SECTION. Sec. 2. A new section is added to chapter 39.12 RCW to read as follows:

The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees collected under RCW 39.12.070. Appropriations from the account, not including moneys transferred to the general fund pursuant to RCW 39.12.070, may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW.

Sec. 3. RCW 39.12.042 and 1989 c 12 s 11 are each amended to read as follows:

If any agency of the state, or any county, municipality, or political subdivision created by its laws shall ~~((wilfully))~~ knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 19, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 405

[Substitute House Bill 1226]

### CONSUMER LOAN COMPANIES—PREMIUM CALCULATION FOR CREDIT LIFE OR DISABILITY INSURANCE

Effective Date: 7/25/93

AN ACT Relating to the amounts of credit life insurance and credit disability insurance that consumer loan companies may make in connection with open-end loans; and amending RCW 31.04.115.

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

**Sec. 1.** RCW 31.04.115 and 1991 c 208 s 12 are each amended to read as follows:

(1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(a) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(b) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the

sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection, the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

~~(4)(a) If credit life or ((disability insurance is provided, and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, as permitted by the insurance commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection (2) of this section for the calculation of interest))~~ credit disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, at the rate approved by the insurance commissioner to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in subsection (2) of this section for the calculation of interest charges; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee

shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the supervisor. In adopting the rules the supervisor shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the supervisor. In specifying such form the supervisor shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

Passed the House April 19, 1993.

Passed the Senate April 7, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.



## CHAPTER 406

[Engrossed Substitute House Bill 1372]

## PERFORMANCE-BASED GOVERNMENT ACT OF 1993

Effective Date: 7/25/93

AN ACT Relating to accountability in state government; amending RCW 43.88.020, 43.88.090, 43.88.160, and 44.28.085; adding a new section to chapter 44.28 RCW; and creating new sections. Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. The legislature finds that many of the systems currently in place for assuring accountability in state government programs are not operated comprehensively, do not take advantage of modern management techniques, and do not contribute adequately to the optimum use of scarce resources. Critical variables that are not always taken into account include whether stated goals and objectives are being achieved, and whether desired results are being accomplished.

Agency executives need more accurate information for setting policy, determining whether new or existing programs are effective, and improving internal controls for agency management. These needs must be met at all levels of operation, and must be clearly communicated to the legislature and all interested parties.

Ensuring accountability in government involves a long-term commitment to policy planning, quality management, and results-oriented evaluation. It is the intent of the legislature to facilitate program evaluations and performance audits of selected state agencies and programs through the coordinated resources of the executive and legislative branches of state government.

Sec. 2. RCW 43.88.020 and 1991 c 358 s 6 are each amended to read as follows:

(1) "Budget" means a proposed plan of expenditures for a given period or purpose and the proposed means for financing these expenditures.

(2) "Budget document" means a formal, written statement offered by the governor to the legislature, as provided in RCW 43.88.030.

(3) "Director of financial management" means the official appointed by the governor to serve at the governor's pleasure and to whom the governor may delegate necessary authority to carry out the governor's duties as provided in this chapter. The director of financial management shall be head of the office of financial management which shall be in the office of the governor.

(4) "Agency" means and includes every state office, officer, each institution, whether educational, correctional or other, and every department, division, board and commission, except as otherwise provided in this chapter.

(5) "Public funds", for purposes of this chapter, means all moneys, including cash, checks, bills, notes, drafts, stocks, and bonds, whether held in trust, for operating purposes, or for capital purposes, and collected or disbursed under law, whether or not such funds are otherwise subject to legislative appropriation, including funds maintained outside the state treasury.

(6) "Regulations" means the policies, standards, and requirements, stated in writing, designed to carry out the purposes of this chapter, as issued by the governor or the governor's designated agent, and which shall have the force and effect of law.

(7) "Ensuing biennium" means the fiscal biennium beginning on July 1st of the same year in which a regular session of the legislature is held during an odd-numbered year pursuant to Article II, section 12 of the Constitution and which biennium next succeeds the current biennium.

(8) "Dedicated fund" means a fund in the state treasury, or a separate account or fund in the general fund in the state treasury, that by law is dedicated, appropriated or set aside for a limited object or purpose; but "dedicated fund" does not include a revolving fund or a trust fund.

(9) "Revolving fund" means a fund in the state treasury, established by law, from which is paid the cost of goods or services furnished to or by a state agency, and which is replenished through charges made for such goods or services or through transfers from other accounts or funds.

(10) "Trust fund" means a fund in the state treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes.

(11) "Administrative expenses" means expenditures for: (a) Salaries, wages, and related costs of personnel and (b) operations and maintenance including but not limited to costs of supplies, materials, services, and equipment.

(12) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(13) "Lapse" means the termination of authority to expend an appropriation.

(14) "Legislative fiscal committees" means the legislative budget committee, the legislative evaluation and accountability program committee, the ways and means committees of the senate and house of representatives, and, where appropriate, the legislative transportation committee.

(15) "Fiscal period" means the period for which an appropriation is made as specified within the act making the appropriation.

(16) "Primary budget driver" means the primary determinant of a budget level, other than a price variable, which causes or is associated with the major expenditure of an agency or budget unit within an agency, such as a caseload, enrollment, workload, or population statistic.

(17) "Stabilization account" means the budget stabilization account created under RCW 43.88.525 as an account in the general fund of the state treasury.

(18) "State tax revenue limit" means the limitation created by chapter 43.135 RCW.

(19) "General state revenues" means the revenues defined by Article VIII, section 1(c) of the state Constitution.

(20) "Annual growth rate in real personal income" means the estimated percentage growth in personal income for the state during the current fiscal year, expressed in constant value dollars, as published by the office of financial management or its successor agency.

(21) "Estimated revenues" means estimates of revenue in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast including estimates of revenues to support financial plans under RCW 44.40.070, that are prepared by the office of financial management in consultation with the interagency task force.

(22) "Estimated receipts" means the estimated receipt of cash in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast.

(23) "State budgeting, accounting, and reporting system" means a system that gathers, maintains, and communicates fiscal information. The system links fiscal information beginning with development of agency budget requests through adoption of legislative appropriations to tracking actual receipts and expenditures against approved plans.

(24) "Allotment of appropriation" means the agency's statement of proposed expenditures, the director of financial management's review of that statement, and the placement of the approved statement into the state budgeting, accounting, and reporting system.

(25) "Statement of proposed expenditures" means a plan prepared by each agency that breaks each appropriation out into monthly detail representing the best estimate of how the appropriation will be expended.

(26) "Undesignated fund balance (or deficit)" means unreserved and undesignated current assets or other resources available for expenditure over and above any current liabilities which are expected to be incurred by the close of the fiscal period.

(27) "Internal audit" means an independent appraisal activity within an agency for the review of operations as a service to management, including a systematic examination of accounting and fiscal controls to assure that human and material resources are guarded against waste, loss, or misuse; and that reliable data are gathered, maintained, and fairly disclosed in a written report of the audit findings.

(28) "Performance audit" means an audit that determines the following: (a) Whether a government entity is acquiring, protecting, and using its resources economically and efficiently; (b) the causes of inefficiencies or uneconomical practices; (c) whether the entity has complied with laws and rules applicable to the program; (d) the extent to which the desired results or benefits established

by the legislature are being achieved; and (e) the effectiveness of organizations, programs, activities, or functions.

(29) "Program evaluation" means the use of a variety of policy and fiscal research methods to (a) determine the extent to which a program is achieving its legislative intent in terms of producing the effects expected, and (b) make an objective judgment of the implementation, outcomes, and net cost or benefit impact of programs in the context of their goals and objectives. It includes the application of systematic methods to measure the results, intended or unintended, of program activities.

**Sec. 3.** RCW 43.88.090 and 1989 c 273 s 26 are each amended to read as follows:

(1) For purposes of developing budget proposals to the legislature, the governor shall have the power, and it shall be the governor's duty, to require from proper agency officials such detailed estimates and other information in such form and at such times as the governor shall direct. The estimates for the legislature and the judiciary shall be transmitted to the governor and shall be included in the budget without revision. The estimates for state pension contributions shall be based on the rates provided in chapter 41.45 RCW. Copies of all such estimates shall be transmitted to the standing committees on ways and means of the house and senate at the same time as they are filed with the governor and the office of financial management.

~~((2) Estimates from each agency shall include goals and objectives for each program administered by the agency. The goals and objectives shall, whenever possible, be stated in terms of objective measurable results.))~~

The estimates shall include statements or tables which indicate, by agency, the state funds which are required for the receipt of federal matching revenues. The estimates shall be revised as necessary to reflect legislative enactments and adopted appropriations and shall be included with the initial biennial allotment submitted under RCW 43.88.110.

~~((3))~~ (2) It is the policy of the state that each state agency define its mission and establish measurable goals for achieving desirable results for those who receive its services. This section shall not be construed to require an agency to develop a new mission or goals in place of identifiable missions or goals that meet the intent of this section. State agencies should involve affected groups and individuals in developing their missions and goals.

(3) For the purpose of assessing program performance, each state agency shall establish program objectives for each major program in its budget. The objectives shall be consistent with the missions and goals developed under this section. The objectives shall be expressed to the extent practicable in outcome-based, objective, and measurable form unless permitted by the office of financial management to adopt a different standard.

(4) In concert with legislative and executive agencies, the office of financial management shall develop a plan for using these outcome-based objectives in the evaluation of agency performance for improved accountability of state govern-

ment. Any elements of the plan requiring legislation shall be submitted to the legislature no later than November 30, 1994.

(5) In the year of the gubernatorial election, the governor shall invite the governor-elect or the governor-elect's designee to attend all hearings provided in RCW 43.88.100; and the governor shall furnish the governor-elect or the governor-elect's designee with such information as will enable the governor-elect or the governor-elect's designee to gain an understanding of the state's budget requirements. The governor-elect or the governor-elect's designee may ask such questions during the hearings and require such information as the governor-elect or the governor-elect's designee deems necessary and may make recommendations in connection with any item of the budget which, with the governor-elect's reasons therefor, shall be presented to the legislature in writing with the budget document. Copies of all such estimates and other required information shall also be submitted to the standing committees on ways and means of the house and senate.

**Sec. 4.** RCW 43.88.160 and 1992 c 118 s 8 are each amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) The director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date. The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. The system developed by the director shall include criteria for determining the scope and comprehensiveness of internal controls required by classes of agencies, depending on the level of resources at risk.

Each agency head or authorized designee shall be assigned the responsibility and authority for establishing and maintaining internal audits following the standards of internal auditing of the institute of internal auditors;

(b) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials; and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

~~((b))~~ (c) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

~~((e))~~ (d) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated

by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter said plans, except that for the following agencies no amendment or alteration of said plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

~~((d))~~ (e) Fix the number and classes of positions or authorized man years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix said number or said classes for the following: Agencies headed by elective officials;

~~((e))~~ (f) Provide for transfers and repayments between the budget stabilization account and the general fund as directed by appropriation and RCW 43.88.525 through 43.88.540;

~~((f) Promulgate regulations))~~ (g) Adopt rules to effectuate provisions contained in (a) through ~~((e))~~ (f) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Disburse public funds under the treasurer's supervision or custody by warrant or check;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to issue any warrant or check for public funds in the treasury except upon forms duly prescribed by the director of financial management. Said forms shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect and copies thereof are on file with the office of financial management; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made: PROVIDED, That when services are lawfully paid for in advance of full performance by any private individual or business entity other than as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will

fully indemnify the state against any and all losses on account of breach of promise to fully perform such services: AND PROVIDED FURTHER, That no payments shall be made in advance for any equipment maintenance services to be performed more than three months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official or employee charged with the receipt, custody or safekeeping of public funds. Where feasible in conducting examinations, the auditor shall utilize data and findings from the internal control system prescribed by the office of financial management. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include ~~((at least the following:))~~ determinations as to whether agencies, in making expenditures, complied with the laws of this state~~((: PROVIDED, That nothing in this section may be construed to grant))~~. The state auditor ((the right)) is authorized to perform or participate in performance audits only as expressly authorized by the legislature in the omnibus biennial appropriations acts. A performance audit for the purpose of this section is the examination of the effectiveness of the administration, its efficiency, and its adequacy in terms of the programs of departments or agencies as previously approved by the legislature. ~~((The authority and responsibility to conduct such an examination shall be vested in the legislative budget committee as prescribed in RCW 44.28.085.))~~ The state auditor, upon completing an audit for legal and financial compliance under chapter 43.09 RCW, may report to the legislative budget committee or other appropriate committees of the legislature, in a manner prescribed by the legislative budget committee, on facts relating to the management or performance of governmental programs where such facts are discovered incidental to the legal and financial audit. The auditor may make such a report to a legislative committee only if the auditor has determined that the agency has been given an opportunity and has failed to resolve the management or performance issues raised by the auditor. If the auditor makes



a report to a legislative committee, the agency may submit to the committee a response to the report. This subsection (6) shall not be construed to authorize the auditor to allocate other than de minimis resources to performance audits except as expressly authorized in the appropriations acts.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken promptly, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110.

(e) Promptly report any irregularities to the attorney general.

(f) Investigate improper governmental activity under chapter 42.40 RCW.

(7) The legislative budget committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in RCW 44.28.085 as well as performance audits and program evaluations. To this end the committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs and generally for an improved level of fiscal management.

NEW SECTION. Sec. 5. A new section is added to chapter 44.28 RCW to read as follows:

(1) In conducting program evaluations as defined in RCW 43.88.020, the legislative budget committee may establish a biennial work plan that identifies state agency programs for which formal evaluation appears necessary. Among the factors to be considered in preparing the work plan are:

(a) Whether a program newly created or significantly altered by the legislature warrants continued oversight because (i) the fiscal impact of the program is significant, or (ii) the program represents a relatively high degree of risk in terms of reaching the stated goals and objectives for that program;

(b) Whether implementation of an existing program has failed to meet its goals and objectives by any significant degree.

(2) The project description for each program evaluation shall include start and completion dates, the proposed research approach, and cost estimates.

(3) The overall plan may include proposals to employ contract evaluators. As conditions warrant, the program evaluation work plan may be amended from time to time. All biennial work plans shall be transmitted to the appropriate fiscal and policy committees of the senate and the house of representatives.

**Sec. 6.** RCW 44.28.085 and 1975 1st ex.s. c 293 s 15 are each amended to read as follows:

The legislative budget committee shall make management surveys and program reviews as to every public body, officer or employee subject to the provisions of RCW 43.09.290 through 43.09.340. The legislative budget committee may also make management surveys and program reviews of local school districts, intermediate school districts, and other units of local government receiving state funds as grants-in-aid or as shared revenues. Management surveys for the purposes of this section shall be an independent examination for the purpose of providing the legislature with an evaluation and report of the manner in which any public agency, officer, administrator, or employee has discharged the responsibility to faithfully, efficiently, and effectively administer any legislative purpose of the state. Program reviews for the purpose of this section shall be an examination of state or local government programs to ascertain whether or not such programs continue to serve their intended purposes, are conducted in an efficient and effective manner, or require modification or elimination(~~(= PROVIDED, That)~~). Nothing in this section shall limit the power or duty of the state auditor to report to the legislature as directed by ~~((subsection (3) of))~~ RCW 43.88.160 ~~((as now or hereafter amended. The authority in this section conferred excludes a like authority in the state auditor))~~.

The legislative budget committee shall receive a copy of each report of examination issued by the state auditor under RCW 43.09.310, shall review all such reports, and shall make such recommendations to the legislature and to the state auditor as it deems appropriate.

NEW SECTION. **Sec. 7.** This act may be known and cited as the performance-based government act of 1993.

NEW SECTION. **Sec. 8.** If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act shall be null and void.

- Passed the House April 25, 1993.
- Passed the Senate April 25, 1993.
- Approved by the Governor May 15, 1993.
- Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 407

[Engrossed Substitute House Bill 1408]

## TEEN PREGNANCY PREVENTION

Effective Date: 7/25/93

AN ACT Relating to teen pregnancy prevention; amending RCW 74.09.790 and 74.09.800; adding a new chapter to Title 70 RCW; creating new sections; and providing an expiration date.

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

**NEW SECTION.** **Sec. 1. FINDINGS AND STATE POLICY.** (1) The legislature finds that:

(a) Each year in Washington approximately fifteen thousand teenage girls become pregnant;

(b) The public cost of adolescent pregnancy is substantial. Eighty percent of teen prenatal care and deliveries are publicly funded. Over fifty percent of the women on public assistance became mothers as teenagers; and

(c) The personal costs of adolescent pregnancy can be socially and economically overwhelming. These too young mothers are often unable to finish high school. Their economic potential is diminished, their probability of dependence on public assistance increases, and their children are more likely to grow up in poverty. The cycle of teen mothers raising children in poverty jeopardizes their future educational opportunity and economic viability of future generations.

(2) The legislature therefore declares that in the interest of health, welfare, and economics, it is the policy of the state to reduce the incidence of unplanned teen pregnancy. To reduce the rate of teen pregnancy in Washington, the legislature hereby:

(a) Establishes four-year projects to prevent teen pregnancy;

(b) Initiates a teen pregnancy prevention media campaign;

(c) Increases funding for family planning education, outreach, and services; and

(d) Expands medicaid eligibility for postpartum family planning services.

**NEW SECTION.** **Sec. 2. DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Community" means an individual political subdivision of the state, a group of such political subdivisions, or a geographic area within a political subdivision.

(2) "Department" means the department of health.

**NEW SECTION.** **Sec. 3. TEEN PREGNANCY PREVENTION PROJECTS.** There is established in the department a program to coordinate and fund community-based teen pregnancy prevention projects. Selection of projects shall be made competitively based upon compliance with the requirements of sections 4 and 5 of this act. To the extent practicable, the projects shall be geographically distributed throughout the state. Criteria shall be established by the

department in consultation with other state agencies and groups involved in teen pregnancy prevention.

**NEW SECTION. Sec. 4. TEEN PREGNANCY PREVENTION PROJECTS—REQUIREMENTS.** (1) Each project shall be designed to reduce the incidence of unplanned teen pregnancy in the defined community, and may include preteens.

(2) At least fifty percent of the funding for teen pregnancy prevention projects shall be community matching funds provided by private or public entities. In-kind contributions such as, but not limited to, staff, materials, supplies, or physical facilities may be considered as all or part of the funding provided by the communities.

(3) The department shall perform evaluations of the projects. Each project shall be evaluated solely on the rate by which the teen pregnancy rates in the community are reduced, measured from the rates prior to the implementation of the project. Projects that demonstrate by empirical evidence that they have been successful in reducing the teen pregnancy rate in their community shall be eligible for consideration if reauthorized funding becomes available.

**NEW SECTION. Sec. 5. TEEN PREGNANCY PREVENTION PROJECTS—APPLICATIONS.** Applications for teen pregnancy prevention project funding shall:

- (1) Define the community requesting funding;
- (2) Designate a lead agency or organization for the project;
- (3) Contain evidence of the active participation of entities in the community that will participate in the project;
- (4) Demonstrate the participation of teens in the development of the project;
- (5) Describe the specific activities that will be undertaken by the project;
- (6) Identify the community matching funds required under section 4 of this act;

(7) Include statistics on teen pregnancy rates in the community over at least the past five years;

(8) Include components that will demonstrate sensitivity to religious, cultural, and socioeconomic differences; and

(9) Include components giving emphasis to the importance of sexual abstinence as a method of pregnancy prevention, as provided in RCW 28A.230.070 and 70.24.210.

The department shall not discriminate against applicants for teen pregnancy prevention project funding based on the type of pregnancy prevention strategies and services included in the applicant's proposal.

**NEW SECTION. Sec. 6. REPORT.** The department shall submit an annual report on the state's teen pregnancy rates over the previous five years, both state-wide and in the specific communities in which teen pregnancy prevention projects are located, to the appropriate standing committees of the legislature in the years 1995 through 1999.

**NEW SECTION. Sec. 7. TEEN PREGNANCY PREVENTION MEDIA CAMPAIGN.** The department shall develop a teen pregnancy prevention media campaign in collaboration with major media organizations and other organizations and corporations interested in playing a positive and constructive role in their communities. The media campaign shall be designed to reduce the incidence of teen pregnancies. The media campaign shall be directed to teens, their parents, and individuals and organizations working with teens. The department may subcontract all or part of the activities associated with the media campaign to qualified private, nonprofit organizations.

**NEW SECTION. Sec. 8.** Sections 1 through 7 of this act shall expire June 30, 1999.

**Sec. 9.** RCW 74.09.790 and 1990 c 151 s 4 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the department to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

(3) "Department" means the department of social and health services.

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the department.

(5) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose.

**(7) "Family planning services" means planning the number of one's children by use of contraceptive techniques.**

**Sec. 10.** RCW 74.09.800 and 1989 1st ex.s. c 10 s 5 are each amended to read as follows:

The department shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) By January 1, 1990, have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing department staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the department; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

~~(7) ((Study the desirability and feasibility of implementing the presumptive eligibility provisions set forth in section 9407 of the federal omnibus budget reconciliation act of 1986 and report to the appropriate committees of the legislature by December 1, 1989; and~~

~~(8))~~ Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes;

(8) Provide family planning services including information about the synthetic progestin capsule implant form of contraception, for twelve months immediately following a pregnancy to women who were eligible for medical assistance under the maternity care access program during that pregnancy or who were eligible only for emergency labor and delivery services during that pregnancy; and

(9) Within available resources, provide family planning services to women who meet the financial eligibility requirements for services under subsections (1) and (2) of this section.

NEW SECTION. Sec. 11. Sections 1 through 7 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 12. Captions as used in this act constitute no part of the law.

NEW SECTION. Sec. 13. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act shall be null and void.

Passed the House April 20, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 408

[Engrossed Substitute House Bill 1084]

### JURY SOURCE LISTS

**Effective Date:** 9/1/94 - Except Sections 1, 2, 3, 6, 8, & 13 which take effect on 7/1/93; & Sections 10 & 12 which take effect on 3/1/94

AN ACT Relating to jury source lists; amending RCW 2.36.010, 2.36.055, 2.36.063, 2.36.065, 2.36.095, 29.04.160, and 29.07.220; adding new sections to chapter 2.36 RCW; adding a new section to chapter 46.20 RCW; creating a new section; providing effective dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 2.36 RCW to read as follows:

The supreme court is requested to adopt court rules to be effective by September 1, 1994, regarding methodology and standards for merging the list of registered voters in Washington state with the list of licensed drivers and identicard holders in Washington state for purposes of creating an expanded jury source list. The rules should specify the standard electronic format or formats in which the lists will be provided to requesting superior courts by the department of information services. In the interim, and until such court rules become effective, the methodology and standards provided in section 3 of this act shall apply. An expanded jury source list shall be available to the courts for use by September 1, 1994.

NEW SECTION. Sec. 2. A new section is added to chapter 2.36 RCW to read as follows:

Not later than January 1, 1994, the secretary of state, the department of licensing, and the department of information services shall adopt administrative rules as necessary to provide for the implementation of the methodology and

standards established pursuant to sections 1 and 3 of this act or by supreme court rule.

NEW SECTION. **Sec. 3.** A new section is added to chapter 2.36 RCW to read as follows:

Unless otherwise specified by rule of the supreme court, the jury source list and master jury list for each county shall be created as provided by this section.

(1) The superior court of each county, after consultation with the county clerk and county auditor of that jurisdiction, shall annually notify the department of information services not later than March 1 of each year of its election to use either a jury source list that is merged by the county or a jury source list that is merged by the department of information services. The department of information services shall annually furnish at no charge to the superior court of each county a separate list of the registered voters residing in that county as supplied annually by the secretary of state and a separate list of driver's license and identicard holders residing in that county as supplied annually by the department of licensing, or a merged list of all such persons residing in that county, in accordance with the annual notification required by this subsection. The lists provided by the department of information services shall be in an electronic format mutually agreed upon by the superior court requesting it and the department of information services. The annual merger of the list of registered voters residing in each county with the list of licensed drivers and identicard holders residing in each county to form a jury source list for each county shall be in accordance with the standards and methodology established in this chapter or by superseding court rule whether the merger is accomplished by the department of information services or by a county.

(2) Persons on the lists of registered voters and driver's license and identicard holders shall be identified by a minimum of last name, first name, middle initial where available, date of birth, gender, and county of residence. Identifying information shall be used when merging the lists to ensure to the extent reasonably possible that persons are only listed once on the merged list. Conflicts in addresses are to be resolved by using the most recent record by date of last vote in a general election, date of driver's license or identicard address change or date of voter registration.

(3) The department of information services shall provide counties that elect to receive a jury source list merged by department of information services with a list of names which are possible duplicates that cannot be resolved based on the identifying information required under subsection (2) of this section. If a possible duplication cannot subsequently be resolved satisfactorily through reasonable efforts by the county receiving the merged list, the possible duplicate name shall be stricken from the jury source list until the next annual jury source list is prepared.

**Sec. 4.** RCW 2.36.010 and 1992 c 93 s 1 are each amended to read as follows:



Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) A jury is a body of persons temporarily selected from the qualified inhabitants of a particular district, and invested with power—

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

(b) To try a question of fact.

(2) "Court" when used without further qualification means any superior court or court of limited jurisdiction in the state of Washington.

(3) "Judge" means every judicial officer authorized to hold or preside over a court. For purposes of this chapter "judge" does not include court commissioners or referees.

(4) "Juror" means any person summoned for service on a petit jury, grand jury, or jury of inquest as defined in this chapter.

(5) "Grand jury" means those twelve persons impaneled by a superior court to hear, examine, and investigate evidence concerning criminal activity and corruption.

(6) "Petit jury" means a body of persons twelve or less in number in the superior court and six in number in courts of limited jurisdiction, drawn by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact.

(7) "Jury of inquest" means a body of persons six or fewer in number, but not fewer than four persons, summoned before the coroner or other ministerial officer, to inquire of particular facts.

(8) "Jury source list" means the list of all registered voters for any county, ~~((as compiled by each county auditor pursuant to the provisions of chapter 29.07 RCW))~~ merged with a list of licensed drivers and identocard holders who reside in the county. The list shall specify each ~~((voter's))~~ person's name(¿) and residence address((, and precinct as shown on the original registration card of each qualified voter)) and conform to the methodology and standards set pursuant to the provisions of section 3 of this act or by supreme court rule. The list shall be filed with the superior court by the county auditor.

(9) "Master jury list" means the list of prospective jurors from which jurors summoned to serve will be randomly selected. The master jury list shall be either randomly selected from the jury source list or may be an exact duplicate of the jury source list.

(10) "Jury term" means a period of time of one or more days, not exceeding one month, during which summoned jurors must be available to report for juror service.

(11) "Juror service" means the period of time a juror is required to be present at the court facility. This period of time may not extend beyond the end of the jury term, and may not exceed two weeks, except to complete a trial to which the juror was assigned during the two-week period.

(12) "Jury panel" means those persons randomly selected for jury service for a particular jury term.

**Sec. 5.** RCW 2.36.055 and 1988 c 188 s 4 are each amended to read as follows:

The (~~county auditor shall prepare and file with the~~) superior court at least annually (~~at a time or times set forth in an order of the judges of the superior court from the original registration files of voters of the county a list of all registered voters. The list may be divided into the respective voting precincts~~) shall cause a jury source list to be compiled from a list of all registered voters and a list of licensed drivers and identicard holders residing in the county.

The superior court upon receipt of the jury source list (~~of registered voters filed by the county auditor shall use that list as the jury source list and~~) shall compile a master jury list (~~from the source list~~). The master jury list shall be certified by the superior court and filed with the county clerk. All previous jury source lists and master jury lists shall be superseded. In the event that, for any reason, a county's jury source list is not timely created and available for use at least annually, the most recent previously compiled jury source list for that county shall be used by the courts of that county on an emergency basis only for the shortest period of time until a current jury source list is created and available for use.

Upon receipt of amendments to the list of registered voters (~~from the county auditor~~) and licensed drivers and identicard holders residing in the county the superior court may update the jury source list and master jury list as maintained by the county clerk accordingly.

**Sec. 6.** RCW 2.36.063 and 1988 c 188 s 5 are each amended to read as follows:

The judge or judges of the superior court of any county may employ a properly programmed electronic data processing system or device to compile the jury source list, and to compile the master jury list and to randomly select jurors from the master jury list.

**Sec. 7.** RCW 2.36.065 and 1988 c 188 s 6 are each amended to read as follows:

It shall be the duty of the judges of the superior court to ensure continued random selection of the master jury list and jury panels, which shall be done without regard to whether a person's name originally appeared on the list of registered voters, or on the list of licensed drivers and identicard holders, or both. The judges shall review the process from time to time and shall cause to be kept on file with the county clerk a description of the jury selection process. Any person who desires may inspect this description in said office.

Nothing in this chapter shall be construed as requiring uniform equipment or method throughout the state, so long as fair and random selection of the master jury list and jury panels is achieved.

**Sec. 8.** RCW 2.36.095 and 1992 c 93 s 4 are each amended to read as follows:

(1) Persons selected to serve on a petit jury, grand jury, or jury of inquest shall be summoned by mail or personal service. The county clerk shall issue summons and thereby notify persons selected for jury duty. The clerk may issue summons for any jury term, in any consecutive twelve-month period, at any time thirty days or more before the beginning of the jury term for which the summons are issued. However, when applicable, the provisions of RCW 2.36.130 apply.

(2) In courts of limited jurisdiction summons shall be issued by the court. Upon the agreement of the courts, the county clerk may summon jurors for any and all courts in the county or judicial district.

(3) The county clerk shall notify the county auditor of each summons for jury duty that is returned by the postal service as undeliverable.

NEW SECTION. Sec. 9. A new section is added to chapter 2.36 RCW to read as follows:

Each court shall establish a means to preliminarily determine by a written declaration signed under penalty of perjury by the person summoned, the qualifications set forth in RCW 2.36.070 of each person summoned for jury duty prior to their appearance at the court to which they are summoned to serve. Upon receipt by the summoning court of a written declaration stating that a declarant does not meet the qualifications set forth in RCW 2.36.070, that declarant shall be excused from appearing in response to the summons. If a person summoned to appear for jury duty fails to sign and return a declaration of his or her qualifications to serve as a juror prior to appearing in response to a summons and is later determined to be unqualified for one of the reasons set forth in RCW 2.36.070, that person shall not be entitled to any compensation as provided in RCW 2.36.150. Information provided to the court for preliminary determination of statutory qualification for jury duty may only be used for the term such person is summoned and may not be used for any other purpose, except that the court, or designee, may report a change of address or nondelivery of summons of persons summoned for jury duty to the county auditor.

Sec. 10. RCW 29.04.160 and 1977 ex.s. c 226 s 1 are each amended to read as follows:

No later than February 15th and no later than August 15th of each year, the secretary of state shall provide a duplicate copy of the master state-wide computer tape or data file of registered voters to the state central committee of each major political party((;)) at actual duplication cost, ((and)) shall provide a duplicate copy of the master state-wide computer tape or data file of registered voters to the statute law committee without cost, and shall provide a duplicate copy of the master state-wide computer tape or electronic data file of registered voters to the department of information services for purposes of creating the jury source list without cost. The master state-wide computer tape or data file of registered voters or portions of the tape or file shall be available to any other political party, at actual duplication cost, upon written request to the secretary of state. Restrictions as to the commercial use of the information on the state-wide

computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29.04.110 and 29.04.120 as now existing or hereafter amended.

**Sec. 11.** RCW 29.07.220 and 1991 c 81 s 22 are each amended to read as follows:

Each county auditor shall maintain a computer file on magnetic tape or disk, punched cards, or other form of data storage containing the records of all registered voters within the county. Where it is necessary or advisable, the auditor may provide for the establishment and maintenance of such files by private contract or through interlocal agreement as provided by chapter 39.34 RCW, as it now exists or is hereafter amended. The computer file shall include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, sex, date of registration, applicable taxing district and precinct codes and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain at least the last five such consecutive dates: **PROVIDED**, That if the voter has not voted at least five times since establishing his or her current registration record, only the available dates shall be included.

**NEW SECTION.** **Sec. 12.** A new section is added to chapter 46.20 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall annually provide to the department of information services at no charge a computer tape or electronic data file of all licensed drivers and identicard holders who are eighteen years of age or older and whose records have not expired for more than two years and which shall contain the following information on each such person: Full name, date of birth, residence address including county, sex, and most recent date of application, renewal, replacement, or change of driver's license or identicard.

(2) Before complying with subsection (1) of this section, the department shall remove from the tape or file the names of any certified participants in the Washington state address confidentiality program under chapter 40.24 RCW that have been identified to the department by the secretary of state.

**NEW SECTION.** **Sec. 13.** If specific funding for section 11 of this act, referencing section 11 of this act by bill number, is not provided by June 30, 1994, in the omnibus appropriations act, section 11 of this act is null and void.

**NEW SECTION.** **Sec. 14.** 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. 15.** (1) Sections 1, 2, 3, 6, 8, and 13 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

(2) Sections 10 and 12 of this act shall take effect March 1, 1994.

(3) The remainder of this act shall take effect September 1, 1994.

Passed the House April 19, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 409

[Substitute House Bill 1469]

### JAIL INMATE MEDICAL COSTS—RESPONSIBILITY

Effective Date: 5/15/93

AN ACT Relating to reimbursement of medical costs for care provided to confined persons; amending RCW 70.48.130; and declaring an emergency.

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

**Sec. 1.** RCW 70.48.130 and 1986 c 118 s 9 are each amended to read as follows:

It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the ~~((governing unit for the cost thereof if the confined person requires treatment for which such person is eligible under the department of social and health services' public assistance medical program))~~ provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical

care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of ~~((emergency and other))~~ health care ~~((to the extent that such person is reasonably able to pay for such care))~~ services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to ((such)) the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for ~~((financial assistance from the department or from a private source))~~ the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

~~((This section is not intended to limit or change any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided or paid for.))~~

Under no circumstance shall necessary medical services be denied or delayed ~~((pending))~~ because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided.

**NEW SECTION.** Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.  
 Passed the Senate April 14, 1993.  
 Approved by the Governor May 15, 1993.  
 Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 410**

[House Bill 1495]

**DISTRIBUTION OF LOCAL EFFORT ASSISTANCE FUNDS—REVISIONS**

**Effective Date: 7/25/93**

AN ACT Relating to distribution of local effort assistance funds; and amending RCW 28A.500.010.

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

**Sec. 1.** RCW 28A.500.010 and 1992 c 49 s 2 are each amended to read as follows:

(1) Commencing with taxes assessed in 1988 to be collected in calendar year 1989 and thereafter, in addition to a school district's other general fund allocations, each eligible district shall be provided local effort assistance funds as provided in this section. Such funds are not part of the district's basic education allocation. For the first distribution of local effort assistance funds provided under this section in calendar year 1989, state funds may be prorated according to the formula in this section.

(2)(a) "Prior tax collection year" shall mean the year immediately preceding the year in which the local effort assistance shall be allocated.

(b) The "state-wide average ten percent levy rate" shall mean ten percent of the total levy bases as defined in RCW 84.52.0531(4) summed for all school districts, and divided by the total assessed valuation for excess levy purposes in the prior tax collection year for all districts as adjusted to one hundred percent by the county indicated ratio established in RCW 84.48.075.

(c) The "ten percent levy rate" of a district shall mean:

(i) Ten percent of the district's levy base as defined in RCW 84.52.0531(4), plus one-half of any amount computed under RCW 84.52.0531(3)(b) in the case of nonhigh school districts; divided by

(ii) The district's assessed valuation for excess levy purposes for the prior tax collection year as adjusted to one hundred percent by the county indicated ratio.

(d) "Eligible districts" shall mean those districts with a ten percent levy rate which exceeds the state-wide average ten percent levy rate.

(3) Allocation of state matching funds to eligible districts for local effort assistance shall be determined as follows:

(a) Funds raised by the district through maintenance and operation levies during that tax collection year shall be matched with state funds using the following ratio of state funds to levy funds: (i) The difference between the

district's ten percent levy rate and the state-wide average ten percent levy rate; to (ii) the state-wide average ten percent levy rate.

(b) The maximum amount of state matching funds for which a district may be eligible in any tax collection year shall be ten percent of the district's levy base as defined in RCW 84.52.0531(4), multiplied by the following percentage: (i) The difference between the district's ten percent levy rate and the state-wide average ten percent levy rate; divided by (ii) the district's ten percent levy rate.

(4)(a) Through tax collection year 1992, fifty-five percent of local effort assistance funds shall be distributed to qualifying districts during the applicable tax collection year on or before June 30 and forty-five percent shall be distributed on or before December 31 of any year.

(b) In tax collection year 1993 and thereafter, local effort assistance funds shall be distributed to qualifying districts as follows:

- (i) Thirty percent in April;
- (ii) Twenty-three percent in May;
- (iii) Two percent in June;
- (iv) ~~((Twenty-six))~~ Seventeen percent in August;
- (v) Nine percent in October;
- ~~((+))~~ (vi) Seventeen percent in November; and
- ~~((+))~~ (vii) Two percent in December.

Passed the House March 11, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 411

[Substitute House Bill 1504]

### STATE NORMAL SCHOOL LANDS—REVENUE DISPOSITION—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to disposition of certain normal school fund revenues; amending RCW 28B.35.751 and 43.79.150; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College are the state's comprehensive undergraduate institutions and each should share equally in the benefits derived from lands set apart in the enabling act for state normal school purposes.

**Sec. 2.** RCW 28B.35.751 and 1991 sp.s. c 13 s 95 are each amended to read as follows:

All moneys received from the lease or rental of lands set apart by the enabling act for state normal schools purposes; all interest or income arising from



the proceeds of the sale of such lands or of the timber, fallen timber, stone, gravel, or other valuable material thereon, less the allocation to the state treasurer's service (~~(account {fund})~~) fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160; and all moneys received as interest on deferred payments on contracts for the sale of such lands, shall from time to time be paid into the state treasury and credited to the Eastern Washington University, Central Washington University, Western Washington University and The Evergreen State College capital projects accounts as herein provided to be expended for capital projects, and bond retirement purposes as set forth in RCW 28B.35.750, as now or hereafter amended. Eastern Washington University, Central Washington University, Western Washington University, and The Evergreen State College shall be credited with one-fourth of the total amount(~~(: PROVIDED, That Eastern Washington University, Central Washington University and Western Washington University shall each be credited with one third of the total amount for so long as there remain unpaid and outstanding any bonds which are payable in whole or in part out of the moneys, interest or income described in this section))~~ beginning July 1, 2003. Beginning July 1, 1995, The Evergreen State College shall receive five percent of the total amount not obligated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall receive equal amounts of the remaining amount. Beginning July 1, 1997, The Evergreen State College shall receive ten percent of the total amount not obligated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall receive equal amounts of the remaining amount. Beginning July 1, 1999, The Evergreen State College shall receive fifteen percent of the total amount not dedicated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall each receive equal amounts of the remaining amount. Beginning July 1, 2001, The Evergreen State College shall receive twenty percent of the total amount not obligated to repayment of bonds; Eastern Washington University, Central Washington University, and Western Washington University shall each receive equal amounts of the remaining amount.

**Sec. 3.** RCW 43.79.150 and 1977 ex.s. c 169 s 104 are each amended to read as follows:

The one hundred thousand acres of land granted by the United States government to the state for state normal schools in section 17 of the enabling act are assigned to the support of the regional universities, which were formerly the state colleges of education and to The Evergreen State College.

Passed the House March 13, 1993.  
 Passed the Senate April 8, 1993.  
 Approved by the Governor May 15, 1993.  
 Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 412

[Engrossed Substitute House Bill 1512]

### DEPENDENT CHILDREN—CONDITIONS WARRANTING TERMINATION OF PARENTAL RIGHTS REVISED

Effective Date: 7/25/93

AN ACT Relating to dependent children; amending RCW 13.34.145, 13.34.180, 13.34.190, 13.34.232, 13.34.110, 13.34.120, 13.34.150, 13.34.162, 26.44.020, 26.44.030, 26.44.040, 26.44.063, 26.44.067, and 26.44.100; adding new sections to chapter 13.34 RCW; adding new sections to chapter 26.44 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 13.34.145 and 1989 1st ex.s. c 17 s 18 are each amended to read as follows:

(1) In all cases where a child has been placed in substitute care for at least fifteen months, the agency having custody of the child shall prepare a permanency ((planning)) plan and present it in a hearing ((shall be)) held before the court no later than eighteen months following commencement of the placement episode.

(2) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(((4)))(5). In addition the court shall: (a) Approve a ((permanent plan of care)) permanency plan which ((can)) shall include one of the following: Adoption, guardianship, ((or)) placement of the child in the home of the child's parent, relative placement with written permanency plan, or family foster care with written permanency agreement; (b) require filing of a petition for termination of parental rights; or (c) dismiss the dependency, unless the court finds, based on clear, cogent, and convincing evidence, that it is in the best interest of the child to continue the dependency beyond eighteen months, based on ((a permanent plan of care)) the permanency plan. Extensions may only be granted in increments of twelve months or less.

**Sec. 2.** RCW 13.34.180 and 1990 c 246 s 7 are each amended to read as follows:

A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(7), and shall allege:

(1) That the child has been found to be a dependent child under RCW 13.34.030(2); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(2); and

(4) That the services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(a) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(b) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home; or

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been offered or provided.

Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you.  
You have important legal rights and you must take steps to protect your

interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

**Sec. 3.** RCW 13.34.190 and 1992 c 145 s 15 are each amended to read as follows:

After hearings pursuant to RCW 13.34.110, the court may enter an order terminating all parental rights to a child if the court finds that:

(1) The allegations contained in the petition as provided in RCW 13.34.180 (1) through (6) are established by clear, cogent, and convincing evidence; or

(2) RCW 13.34.180 (3) and (4) may be waived because the allegations under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a reasonable doubt; or

(3) The allegation under RCW 13.34.180(7) is established beyond a reasonable doubt. In determining whether RCW 13.34.180 (5) and (6) are established beyond a reasonable doubt, the court shall consider whether one or more of the ~~((following):~~

~~(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;~~

~~(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 or 9A.42.030;~~

~~(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;~~

~~(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;~~

~~(e) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;~~

~~(f) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted~~

~~in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim)) aggravated circumstances listed in RCW 13.34.130(2) exist; and~~

(4) Such an order is in the best interests of the child.

**Sec. 4.** RCW 13.34.232 and 1981 c 195 s 3 are each amended to read as follows:

If the court has made a finding under RCW 13.34.231, it shall enter an order establishing a guardianship for the child. The order shall:

- (1) Appoint a person or agency to serve as guardian;
- (2) Specify the guardian's rights and responsibilities concerning the care, custody, and control of the child. A guardian shall not have the authority to consent to the child's adoption;
- (3) Specify an appropriate frequency of visitation between the parent and the child; and
- (4) Specify the need for any continued involvement of the supervising agency and the nature of that involvement, if any.

The order shall not affect the child's status as a dependent child, and the child shall remain dependent for the duration of the guardianship.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 13.34 RCW to read as follows:

(1) The provisions of this section shall apply when a court orders a party to undergo an alcohol or substance abuse diagnostic investigation and evaluation.

(2) The facility conducting the investigation and evaluation shall make a written report to the court stating its findings and recommendations including family-based services or treatment when appropriate. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (a) Type of treatment;
- (b) Nature of treatment;
- (c) Length of treatment;
- (d) A treatment time schedule; and
- (e) Approximate cost of the treatment.

The affected person shall be included in developing the appropriate plan of treatment. The plan of treatment must be signed by treatment provider and the affected person. The initial written report based on the treatment plan and response to treatment shall be sent to appropriate persons six weeks after initiation of treatment, and after three months, after six months, after twelve months, and thereafter every six months if treatment exceeds twelve months. Reports are to be filed in a timely manner. Close-out of the treatment record must include summary of pretreatment and posttreatment, with final outcome and disposition. The report shall also include recommendations for ongoing stability and decrease in destructive behavior.

The report with the treatment plan shall be filed with the court and a copy given to the person evaluated and the person's counsel. A copy of the treatment plan shall also be given to the department's caseworker and to the guardian ad litem. Any program for chemical dependency shall meet the program requirements contained in chapter 70.96A RCW.

(3) If the court has ordered treatment pursuant to a dependency proceeding it shall also require the treatment program to provide, in the reports required by subsection (2) of this section, status reports to the court, the department, the supervising child-placing agency if any, and the person or person's counsel regarding: (a) The person's cooperation with the treatment plan proposed; and (b) the person's progress in treatment.

(4) In addition, if the party fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program or agency administering the treatment shall report such breach to the court, the department, the guardian ad litem, the supervising child-placing agency if any, and the person or person's counsel, within twenty-four hours, together with its recommendation. These reports shall be made as a declaration by the person who is personally responsible for providing the treatment.

(5) Nothing in this chapter may be construed as allowing the court to require the department to pay for the cost of any alcohol or substance abuse evaluation or treatment program.

**NEW SECTION.** Sec. 6. A new section is added to chapter 13.34 RCW to read as follows:

(1) The court or the department, upon receiving a report under section 5(4) of this act, may schedule a show cause hearing to determine whether the person is in violation of the treatment conditions. All parties shall be given notice of the hearing. The court shall hold the hearing within ten days of the request for a hearing. At the hearing, testimony, declarations, reports, or other relevant information may be presented on the person's alleged failure to comply with the treatment plan and the person shall have the right to present similar information on his or her own behalf.

(2) If the court finds that there has been a violation of the treatment conditions it shall modify the dependency order, as necessary, to ensure the safety of the child. The modified order shall remain in effect until the party is in full compliance with the treatment requirements.

**Sec. 7.** RCW 13.34.110 and 1991 c 340 s 3 are each amended to read as follows:

The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor, and after it has announced its findings of fact shall hold a hearing to consider disposition of the case immediately following the fact-finding hearing or at a continued hearing within fourteen days or longer for good cause shown. The parties need not appear at the fact-finding or dispositional hearing

if ~~((and))~~ the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement~~((but))~~. The court shall receive and review a social study before entering an order based on agreement. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by mail of the time and place of any continued hearing.

All hearings may be conducted at any time or place within the limits of the county, and such cases may not be heard in conjunction with other business of any other division of the superior court. The general public shall be excluded, and only such persons may be admitted who are found by the judge to have a direct interest in the case or in the work of the court. If a child resides in foster care or in the home of a relative pursuant to a disposition order entered under RCW 13.34.130, the court may allow the child's foster parent or relative care provider to attend dependency review proceedings pertaining to the child for the sole purpose of providing information about the child to the court.

Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200.

**Sec. 8.** RCW 13.34.120 and 1987 c 524 s 5 are each amended to read as follows:

(1) To aid the court in its decision on disposition, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be made by the person or agency filing the petition. The study shall include all social records and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file ~~((and))~~, social study, guardian ad litem report, the court-appointed special advocates report, if any, and any reports filed by a party at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the community service office. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2) In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(2) (b) or (c) shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs which have been considered and rejected; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal. This section should include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;

(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

**Sec. 9.** RCW 13.34.150 and 1990 c 246 s 6 are each amended to read as follows:

Any order made by the court in the case of a dependent child may be changed, modified, or set aside, only upon a showing of a change in circumstance or as provided in section 8 of this act.

**Sec. 10.** RCW 13.34.162 and 1988 c 275 s 15 are each amended to read as follows:

A determination of child support shall be based upon the child support schedule and standards (~~adopted~~) provided under chapter 26.19 RCW (~~26.19.040~~).

**NEW SECTION.** **Sec. 11.** A new section is added to chapter 26.44 RCW to read as follows:

(1) This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, and safety.

(2) Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline.

(3) No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

(4) A person reporting injury, abuse, or neglect to an adult dependent person shall not suffer negative consequences if the person reporting believes in good faith that the adult dependent person has been found legally incompetent or disabled.



**Sec. 12.** RCW 26.44.020 and 1988 c 142 s 1 are each amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice (~~(podiatry)~~) podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "~~(Child)~~ Abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, ~~((or))~~ negligent treatment, or maltreatment of a child, adult dependent, or developmentally disabled person by any person under circumstances which indicate that the child's or adult's health, welfare, and safety is harmed ~~((thereby))~~. An abused child is a child who has been subjected to child abuse

or neglect as defined herein(~~(: PROVIDED, That this subsection shall not be construed to authorize interference with child raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety: AND PROVIDED FURTHER, That nothing in this section shall be used to prohibit the reasonable use of corporal punishment as a means of discipline. No parent or guardian shall be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap)~~)).

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons (~~(not able to provide for their own protection through the criminal justice system)~~)" shall be defined as those persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW (~~(or found disabled to such a degree pursuant to said chapter, that such protection is indicated: PROVIDED, That no persons reporting injury, abuse, or neglect to an adult dependent person as defined herein shall suffer negative consequences if such a judicial determination of incompetency or disability has not taken place and the person reporting believes in good faith that the adult dependent person has been found legally incompetent pursuant to chapter 11.88 RCW)~~).

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child (~~(for commercial purposes as those acts are defined by state law)~~) by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety.

(17) "Developmentally disabled person" means a person who has a disability defined in RCW (~~(71.20.016)~~) 71A.10.020.

(18) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard the general welfare of such children and shall include investigations of child abuse and neglect reports, including reports regarding child care centers and family child care homes, and the development, management, and provision of or referral to services to ameliorate conditions which endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(19) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

**Sec. 13.** RCW 26.44.030 and 1991 c 111 s 1 are each amended to read as follows:

(1)(a) When any practitioner, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child or adult dependent or developmentally disabled person, who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(c) The report shall be made at the first opportunity, but ; and in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or

developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department

agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of incidents, conditions, or circumstances of child abuse and neglect, the department shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department (~~(of social and health services)~~) shall (~~(, within funds appropriated for this purpose,)~~) use a risk assessment (~~(tool)~~) process when investigating child abuse and neglect referrals. (~~(The tool shall be used, on a pilot basis, in three local office service areas.)~~) The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the (~~(ways and means)~~) appropriate committees of the senate and house of representatives on the (~~(use)~~) effectiveness of the (~~(tool by December 1, 1989. The report shall include recommendations on the continued use and possible expanded use of the tool)~~) risk assessment process.

(14) Upon receipt of (~~(such)~~) a report of abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

**Sec. 14.** RCW 26.44.040 and 1987 c 206 s 4 are each amended to read as follows:

An immediate oral report shall be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, shall be followed by a report in writing. Such reports shall contain the following information, if known:

- (1) The name, address, and age of the child or adult dependent or developmentally disabled person;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child or the residence of the adult dependent or developmentally disabled person;
- (3) The nature and extent of the injury or injuries;
- (4) The nature and extent of the neglect;
- (5) The nature and extent of the sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information which may be helpful in establishing the cause of the child's or adult dependent or developmentally disabled person's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators.

**Sec. 15.** RCW 26.44.063 and 1988 c 190 s 3 are each amended to read as follows:

(1) It is the intent of the legislature to minimize trauma to a child involved in an allegation of sexual or physical abuse. The legislature declares that removing the child from the home often has the effect of further traumatizing the child. It is, therefore, the legislature's intent that the alleged offender, rather than the child, shall be removed from the home and that this should be done at the earliest possible point of intervention in accordance with RCW 10.31.100, 13.34.130, this section, and RCW 26.44.130.

(2) In any judicial proceeding in which it is alleged that a child has been subjected to sexual or physical abuse, if the court finds reasonable grounds to believe that an incident of sexual or physical abuse has occurred, the court may, on its own motion, or the motion of the guardian ad litem or other parties, issue a temporary restraining order or preliminary injunction restraining or enjoining the person accused of committing the abuse from:

- (a) Molesting or disturbing the peace of the alleged victim;
- (b) Entering the family home of the alleged victim except as specifically authorized by the court; or
- (c) Having any contact with the alleged victim, except as specifically authorized by the court.

(3) In issuing a temporary restraining order or preliminary injunction, the court may impose any additional restrictions that the court in its discretion determines are necessary to protect the child from further abuse or emotional trauma pending final resolution of the abuse allegations.

(4) The court shall issue a temporary restraining order prohibiting a person from entering the family home if the court finds that the order would eliminate the need for an out-of-home placement to protect the child's right to nurturance,

health, and safety and is sufficient to protect the child from further sexual or physical abuse or coercion.

(5) The court may issue a temporary restraining order without requiring notice to the party to be restrained or other parties only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) A temporary restraining order or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding; and

(b) May be revoked or modified.

(7) The person having physical custody of the child shall have an affirmative duty to assist in the enforcement of the restraining order including but not limited to a duty to notify the court as soon as practicable of any violation of the order, a duty to request the assistance of law enforcement officers to enforce the order, and a duty to notify the department of social and health services of any violation of the order as soon as practicable if the department is a party to the action. Failure by the custodial party to discharge these affirmative duties shall be subject to contempt proceedings.

(8) Willful violation of a court order entered under this section is a misdemeanor. A written order shall contain the court's directive and shall bear the legend: "Violation of this order with actual notice of its terms is a criminal offense under chapter 26.44 RCW, is also subject to contempt proceedings, and will subject a violator to arrest."

**Sec. 16.** RCW 26.44.067 and 1989 c 373 s 23 are each amended to read as follows:

(1) Any person having had actual notice of the existence of a restraining order issued by a court of competent jurisdiction pursuant to RCW 26.44.063 who refuses to comply with the provisions of such order (~~when requested by any peace officer of the state~~) shall be guilty of a misdemeanor.

(2) The notice requirements of subsection (1) of this section may be satisfied by the peace officer giving oral or written evidence to the person subject to the order by reading from or handing to that person a copy certified by a notary public or the clerk of the court to be an accurate copy of the original court order which is on file. The copy may be supplied by the court or any party.

(3) The remedies provided in this section shall not apply unless restraining orders subject to this section shall bear this legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.44 RCW AND IS ALSO SUBJECT TO CONTEMPT PROCEEDINGS.

(4) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule. No right of action shall accrue against any peace officer acting upon a properly certified copy of a court order lawful on its face if such officer employs otherwise lawful means to effect the arrest.

**Sec. 17.** RCW 26.44.100 and 1985 c 183 s 1 are each amended to read as follows:

The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this ((æet)) chapter, provided that nothing contained in this ((æet)) chapter shall cause any delay in protective custody action.

NEW SECTION. **Sec. 18.** A new section is added to chapter 26.44 RCW to read as follows:

(1) If a person who has unsupervised visitation rights with a minor child pursuant to a court order is accused of sexually or physically abusing a child and the alleged abuse has been reported to the proper authorities for investigation, the law enforcement officer conducting the investigation may file an affidavit with the prosecuting attorney stating that the person is currently under investigation for sexual or physical abuse of a child and that there is a risk of harm to the child if a temporary restraining order is not entered. Upon receipt of the affidavit, the prosecuting attorney shall determine whether there is a risk of harm to the child if a temporary restraining order is not entered. If the prosecutor determines there is a risk of harm, the prosecutor shall immediately file a motion for an order to show cause seeking to restrict visitation with the child, and seek a temporary restraining order. The restraining order shall be issued for up to ninety days or until the investigation has been concluded in favor of the alleged abuser, whichever is shorter.

(2) Willful violation of a court order entered under this section is a misdemeanor. The court order shall state: "Violation of this order is a criminal offense under chapter 26.44 RCW and will subject the violator to arrest."

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.



**CHAPTER 413**

[Substitute House Bill 1566]

**NOTICE OF ESTATE TAX FINDINGS FILINGS—DEPARTMENT OF REVENUE  
TO GIVE****Effective Date:** 7/25/93

AN ACT Relating to notice of estate tax findings filings; and amending RCW 83.100.160.

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

**Sec. 1.** RCW 83.100.160 and 1988 c 64 s 15 are each amended to read as follows:

Upon filing findings under RCW 83.100.150, the clerk of the superior court shall give notice of the filing (~~(to all persons interested in the proceeding)~~) by causing notice thereof to be posted at the courthouse in the county in which the court is located(~~(, and in addition thereto shall mail)~~). In addition, the department of revenue shall give notice of the filing to all persons interested in the proceeding by mailing a copy of the notice to all persons having an interest in property subject to the tax. The department of revenue is not required to conduct a search for persons interested in the proceedings or property. The department of revenue must mail a copy of the notice only to persons of whom the department has received actual notice as having an interest in the proceeding or property, and, if a probate or administrative proceeding has been commenced in this state, to persons who are listed in the court file as having an interest in the proceedings or property.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

**CHAPTER 414**

[Substitute House Bill 1580]

**GRADUATION RATE IMPROVEMENT AND SHORTENING OF TIME REQUIRED  
TO OBTAIN COLLEGE DEGREE****Effective Date:** 7/25/93

AN ACT Relating to higher education; and adding new sections to chapter 28B.10 RCW.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that, in public colleges and universities, improvement is needed in graduation rates and in the length of time required for students to attain their educational objectives. The legislature also finds that public colleges and universities should offer classes in a way that will permit full-time students to complete a degree or certificate program in about the amount of time described in the institution's catalog as necessary to complete that degree or certificate program.

**NEW SECTION.** **Sec. 2.** (1) By May 15, 1994, each state institution of higher education, as part of its strategic plan, shall adopt strategies designed to shorten the time required for students to complete a degree or certificate and to improve the graduation rate for all students.

(2) Beginning with the fall 1995-96 academic term, each institution of higher education as defined in RCW 28B.10.016 shall implement the strategies described in subsection (1) of this section.

**NEW SECTION.** **Sec. 3.** (1) By May 30, 1994, each public four-year institution of higher education shall forward to the higher education coordinating board for its review and comment, certain preliminary components of the institution's strategic plan. The components shall include strategies to improve student graduation rates and shorten the time needed for students to obtain a baccalaureate degree.

(2) By September 30, 1994, the state board for community and technical colleges will forward to the higher education coordinating board for its review and comment, a report on the strategies adopted by community and technical colleges to speed the progress of students towards their educational goals and to shorten the time needed for students to obtain a degree or certificate.

(3) By December 15, 1994, the higher education coordinating board shall report to the governor and the higher education committees of the house of representatives and senate on its review of strategies designed to improve graduation rates and shorten the time needed for students to obtain a degree or certificate. The report shall include an analysis of system-wide strategies and recommendations for any legislation necessary to assist institutions with the implementation of their plans.

**NEW SECTION.** **Sec. 4.** Each institution of higher education as defined in RCW 28B.10.016 may enter into a student progression understanding with an interested student. The terms of the understanding shall permit a student to obtain a degree or certificate within the standard period of time assumed for a full-time student pursuing that degree or certificate. Usually, the standard amount of time will be about two years for an associate of arts degree and about four years for a baccalaureate degree. Student progression understandings shall not give rise to any cause of action on behalf of any student as a result of the failure of any state institution of higher education to fulfill its obligations under the student progression understanding.

**NEW SECTION.** **Sec. 5.** Sections 1 through 4 of this act are each added to chapter 28B.10 RCW.

Passed the House April 20, 1993.

Passed the Senate April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 415

[Engrossed Substitute House Bill 1966]

IMPLEMENTATION OF JUVENILE JUSTICE RACIAL DISPROPORTIONALITY  
STUDY RECOMMENDATIONS

Effective Date: 7/25/93

AN ACT Relating to implementation of the juvenile justice racial disproportionality study recommendations; amending RCW 2.56.030, 13.06.050, and 13.40.027; adding a new section to chapter 43.101 RCW; adding a new section to chapter 2.56 RCW; adding a new section to chapter 13.04 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** Pursuant to the work of the juvenile justice task force created by the 1991 legislature to undertake a study of Washington state's juvenile justice system, the department of social and health services and the commission on African-American affairs commissioned an independent study of racial disproportionality in the state's juvenile justice system. The study team, which documented evidence of disparity in the treatment of juvenile offenders of color throughout the system, provided recommendations to the legislature on December 15, 1992. The study recommends cultural diversity training for juvenile court and law enforcement personnel, expanded data collection on juvenile offenders throughout the system, development of uniform prosecutorial standards for juvenile offenders, changes to the consolidated juvenile services program and funding formula, dissemination of information to families and communities regarding juvenile court procedures, and examination of juvenile disposition standards for racial and/or ethnic bias.

It is the intent of the legislature to implement the recommendations of this study in an effort to discourage differential treatment of youth of color and their families who come in contact with the juvenile courts in this state, and to promote racial and ethnic sensitivity and awareness throughout the juvenile court system.

**NEW SECTION. Sec. 2.** The administrator for the courts shall develop a plan to improve the collection and reporting of information on juvenile offenders by all juvenile courts in the state. The information related to juvenile offenders shall include, but is not limited to, social, demographic, education, and economic data on juvenile offenders and where possible, their families. Development and implementation of the plan shall be accomplished in consultation with the human rights commission, the governor's juvenile justice advisory committee, superior court judges, juvenile justice administrators, and interested juvenile justice practitioners and researchers. The plan shall include a schedule and budget for implementation and shall be provided to the office of financial management by September 15, 1993.

**Sec. 3.** RCW 2.56.030 and 1992 c 205 s 115 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Formulate and submit to the judicial council of this state recommendations of policies for the improvement of the judicial system;

(10) Submit annually, as of February 1st, to the chief justice and the judicial council, a report of the activities of the administrator's office for the preceding calendar year;

(11) Administer programs and standards for the training and education of judicial personnel;

(12) Examine the need for new superior court and district judge positions under a weighted caseload analysis that takes into account the time required to hear all the cases in a particular court and the amount of time existing judges have available to hear cases in that court. The results of the weighted caseload analysis shall be reviewed by the board for judicial administration and the judicial council, both of which shall make recommendations to the legislature by January 1, 1989. It is the intent of the legislature that weighted caseload analysis become the basis for creating additional district court positions, and recommendations should address that objective;

(13) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(14) Attend to such other matters as may be assigned by the supreme court of this state;

(15) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers by July 1, 1988. The curriculum shall be updated yearly to reflect changes in statutes, court rules, or case law;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be completed and made available to all superior court and court of appeals judges and to all justices of the supreme court by July 1, 1989;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be completed and made available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel by October 1, 1993. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts state-wide.

NEW SECTION. Sec. 4. A new section is added to chapter 43.101 RCW to read as follows:

The criminal justice training commission shall develop, in consultation with the administrator for the courts and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be developed by October 1, 1993. The commission shall ensure that ethnic and diversity training becomes an integral part of the training of law enforcement personnel so as to incorporate cultural sensitivity and awareness into the daily activities of law enforcement personnel.

NEW SECTION. Sec. 5. A new section is added to chapter 2.56 RCW to read as follows:

The administrator for the courts shall, in cooperation with juvenile courts, develop informational materials describing juvenile laws and juvenile court processes and procedures related to such laws, and make such information available to the public. Similar information shall also be made available for the non-English speaking youth and their families.

NEW SECTION. Sec. 6. A new section is added to chapter 13.04 RCW to read as follows:

The administrator of juvenile court shall obtain interpreters as needed consistent with the intent and practice of chapter 2.43 RCW, to enable non-English speaking youth and their families to participate in detention, probation, or court proceedings and programs.

Sec. 7. RCW 13.06.050 and 1983 c 191 s 5 are each amended to read as follows:

No county shall be entitled to receive any state funds provided by this chapter until its application and plan are approved, and unless and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth in this section. In addition, any county making application for state funds under this chapter that also operates a juvenile detention facility must have standards of operations in place that include: Intake and admissions, medical and health care, communication, correspondence, visiting and telephone use, security and control, sanitation and hygiene, juvenile rights, rules and discipline, property, juvenile records, safety and emergency procedures, programming, release and transfer, training and staff development, and food service.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, rates of poverty, size of racial minority populations, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs.

(3) The secretary, in conjunction with the human rights commission, shall evaluate the effectiveness of programs funded under this chapter in reducing racial disproportionality. The secretary shall investigate whether implementation of such programs has reduced disproportionality in counties with initially high levels of disproportionality. The analysis shall indicate which programs are cost-effective in reducing disproportionality in such areas as alternatives to detention, intake and risk assessment standards pursuant to RCW 13.40.038, alternatives to incarceration, and in the prosecution and adjudication of juveniles. The secretary shall report his or her findings to the legislature by December 1, 1994, and December 1 of each year thereafter.

**NEW SECTION. Sec. 8.** The administrator for the courts shall convene a working group to develop standards and guidelines for the prosecution of juvenile offenders under Title 13 RCW, review any racial disproportionality in

diversion, and review the use of detention facilities in a way to reduce racial disproportionality. The administrator shall appoint:

- (1) One defense attorney familiar with juvenile justice, and three prosecuting attorneys familiar with juvenile justice;
- (2) One superior court judge;
- (3) One court commissioner;
- (4) One juvenile court administrator;
- (5) One representative of the juvenile disposition standards board;
- (6) One representative of the department of social and health services;
- (7) One social researcher with expertise in juvenile or criminal justice;
- (8) Two representatives of child advocacy groups recommended by the governor; and
- (9) Two persons recommended jointly by the Washington state minority commissions.

The work group shall develop and submit its recommended standards and guidelines to the appropriate committees of the legislature by December 1, 1994.

**Sec. 9.** RCW 13.40.027 and 1992 c 205 s 103 are each amended to read as follows:

(1) It is the responsibility of the commission to: (a)(i) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally (~~and~~), (ii) specifically review the guidelines relating to the confinement of minor and first offenders as well as the use of diversion, and (iii) review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth; (b) solicit the comments and suggestions of the juvenile justice community concerning disposition standards; and (c) make recommendations to the legislature regarding revisions or modifications of the disposition standards in accordance with RCW 13.40.030. The evaluations shall be submitted to the legislature (~~by December 1, 1992, and~~) on December 1 of each even-numbered year thereafter.

(2) It is the responsibility of the department to: (a) Provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders; (b) at the request of the commission, provide technical and administrative assistance to the commission in the performance of its responsibilities; and (c) provide the commission and legislature with recommendations for modification of the disposition standards.

**NEW SECTION. Sec. 10.** If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1993, in the omnibus appropriations act, this act shall be null and void.

Passed the House April 21, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 416

[Substitute House Bill 1602]

### EDUCATIONAL SERVICE DISTRICTS—ELECTION OF REGIONAL COMMITTEE MEMBERS—REVISIONS

Effective Date: 9/1/94

AN ACT Relating to election of regional committee members; amending RCW 28A.315.030, 28A.315.060, and 28A.315.080; and providing an effective date.

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

**Sec. 1.** RCW 28A.315.030 and 1990 c 33 s 294 are each amended to read as follows:

Notwithstanding any other provision of this chapter to the contrary, ~~((those persons who were county committee members and registered to vote as of July 28, 1985, shall constitute the regional committee of the educational service district within which they are registered to vote until the election of the initial regional committee pursuant to this section. The initial election of members of each regional committee shall be by those persons who were county committee members registered to vote within the educational service district as of July 28, 1985. Only persons who were county committee members and so registered to vote as of July 28, 1985, shall be eligible for membership on an initial regional committee, and only those persons who are eligible for such membership and are in attendance at a meeting held for the purpose of the election shall be entitled to cast a vote. The meeting shall be held at a time and place designated and announced by the educational service district superintendent, but no later than the thirtieth day after July 28, 1985. The educational service district superintendent shall preside over the meeting. Nominations shall be from the floor and shall be for position numbers assigned by the educational service district superintendent for the purpose of the initial election and all subsequent elections held pursuant to RCW 28A.315.060.))~~ the term of office of each regional committee member and position shall expire as of the second Monday of January 1995. Each regional committee member position shall therefore be open for election purposes in 1994. Members of each ~~((initial))~~ regional committee shall be elected by majority vote and shall serve for the staggered terms of office set forth in RCW ~~((28A.315.060))~~ 28A.315.080 and until their successors are certified as elected pursuant to RCW 28A.315.060. Regional committee member position numbers shall be assigned by the educational service district superintendent for purposes of all elections held pursuant to RCW 28A.315.060.



**Sec. 2.** RCW 28A.315.060 and 1990 c 33 s 295 are each amended to read as follows:

The members of each regional committee shall be elected in the following manner:

(1) On or before the 25th day of September, (~~1986~~) 1994, and not later than the 25th day of September of every subsequent even-numbered year, each superintendent of an educational service district shall call an election to be held in each educational service district within which resides a member of a regional committee whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in the educational service district. Such notice shall include instructions, and the rules and regulations established by the state board of education for the conduct of the election. The state board of education is hereby empowered to adopt rules pursuant to chapter 34.05 RCW which establish standards and procedures which the state board deems necessary to conduct elections pursuant to this section; to conduct run-off elections in the event an election for a position is indecisive; and to decide run-off elections which result in tie votes, in a fair and orderly manner.

(2) Candidates for membership on a regional committee shall file a declaration of candidacy with the superintendent of the educational service district wherein they reside. Declarations of candidacy may be filed by person or by mail not earlier than the 1st day of October, and not later than the 15th day of October of each even-numbered year. The superintendent may not accept any declaration of candidacy that is not on file in his or her office or not postmarked before the 16th day of October, or if not postmarked or the postmark is not legible, if received by mail after the 20th day of October of each even-numbered year.

(3) Each member of the regional committee shall be elected by a majority of the votes cast for all candidates for the position by the members of the boards of directors of school districts in the educational service district. All votes shall be cast by mail ballot addressed to the superintendent of the educational service district wherein the school director resides. No votes shall be accepted for counting if postmarked after the 16th day of November or if not postmarked or the postmark is not legible, if received by mail after the 21st day of November of each even-numbered year. An election board comprised of three persons appointed by the board of the educational service district shall count and tally the votes not later than the 25th day of November or the next business day if the 25th falls on a Saturday, Sunday, or legal holiday of each even-numbered year. Each vote cast by a school director shall be recorded as one vote. Within ten days following the count of votes, the educational service district superintendent shall certify to the superintendent of public instruction the name or names of the person(s) elected to be members of the regional committee.

(4) In the event of a change in the number of educational service districts or in the number of educational service district board members pursuant to

chapter 28A.310 RCW a new regional committee shall be elected for each affected educational service district at the next ~~((annual))~~ election conducted pursuant to this section. Those persons who were serving on a regional committee within an educational service district affected by a change in the number of districts or board members shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new board has been elected and certified.

(5) No member of a regional committee shall continue to serve thereon if he or she ceases to be a registered voter of the educational service district board member district or if he or she is absent from three consecutive meetings of the committee without an excuse acceptable to the committee.

**Sec. 3.** RCW 28A.315.080 and 1990 c 33 s 296 are each amended to read as follows:

The terms of members of the regional committees shall be for ~~((five))~~ four years and until their successors are certified as elected. ~~((As nearly as possible one-fifth of the members shall be elected annually.))~~ For the ~~((initial))~~ 1994 election conducted pursuant to RCW 28A.315.030 and the election of a new regional committee following a change in the number of educational service districts or board members, regional committee member positions one ~~((and six)),~~ three, five, seven, and nine shall be for a term of ~~((five))~~ two years, positions two ~~((and seven)),~~ four, six, and eight shall be for a term of four years ~~((positions three and eight shall be for a term of three years, positions four and nine shall be for a term of two years, and position five shall be for a term of one year))~~.

**NEW SECTION.** **Sec. 4.** This act shall take effect September 1, 1994.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 417

[House Bill 1644]

### VOTING BY MAIL—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to voting by mail; amending RCW 29.36.120, 29.36.122, 29.36.126, 29.36.130, 29.36.139, 29.36.150, and 29.10.180; adding a new section to chapter 29.36 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 29.36.120 and 1983 1st ex.s. c 71 s 1 are each amended to read as follows:

At any primary or election, general or special, the county auditor may, in any precinct having fewer than ~~((one))~~ two hundred registered voters at the time of closing of voter registration as provided in RCW 29.07.160, conduct the voting in that precinct by mail ballot. For any precinct having fewer than ~~((one))~~ two hundred registered voters where voting at a primary or a general election is conducted by mail ballot, the county auditor shall, not less than fifteen days prior to the date of that primary or general election, mail or deliver to each registered voter within that precinct a notice that the voting in that precinct will be by mail ballot, an application form for a mail ballot, and a postage prepaid envelope, preaddressed to the issuing officer. A mail ballot shall be issued to each voter who returns a properly executed application to the county auditor no later than the day of that primary or general election. Such application is valid for all subsequent mail ballot elections in that precinct so long as the voter remains qualified to vote.

At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

In no instance shall any special election be conducted by mail ballot in any precinct with ~~((more than one))~~ two hundred or more registered voters if candidates for partisan office are to be voted upon.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than fifteen days prior to the date of such election, mail or deliver to each registered voter a mail ballot and an envelope, preaddressed to the issuing officer.

NEW SECTION. Sec. 2. A new section is added to chapter 29.36 RCW to read as follows:

(1) At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

(2) In an odd-numbered year, the county auditor may conduct by mail ballot a primary or a special election concurrently with the primary:

(a) For any office or ballot measure of a special purpose district which is entirely within the county;

(b) For any office or ballot measure of a special purpose district which lies in the county and one or more other counties if the auditor first secures the

concurrence of the county auditors of those other counties to conduct the primary in this manner district-wide; and

(c) For any ballot measure or nonpartisan office of a county, city, or town if the auditor first secures the concurrence of the legislative authority of the county, city, or town involved.

A primary in an odd-numbered year may not be conducted by mail ballot in any precinct with two hundred or more registered voters if a partisan office or state office or state ballot measure is to be voted upon at that primary in the precinct.

(3) For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than fifteen days before the date of such election, mail or deliver to each registered voter a mail ballot and an envelope, preaddressed to the issuing officer. The county auditor shall notify an election jurisdiction for which a primary is to be held that the primary will be conducted by mail ballot.

(4) To the extent they are not inconsistent with subsections (1) through (3) of this section, the laws governing the conduct of mail ballot special elections apply to nonpartisan primaries conducted by mail ballot.

**Sec. 3.** RCW 29.36.122 and 1983 1st ex.s. c 71 s 2 are each amended to read as follows:

For any special election conducted by mail, the county auditor shall send a mail ballot with a return identification envelope to each registered voter of the district in which the special election is being conducted not sooner than the twenty-fifth day before the date of the election and not later than the fifteenth day before the date of the election. The envelope in which the ballot is mailed (~~shall be clearly marked "Do Not Forward - Return to Sender - Return Postage Guaranteed."~~) must clearly indicate that the ballot is not to be forwarded and is to be returned to the sender with return postage guaranteed.

**Sec. 4.** RCW 29.36.126 and 1983 1st ex.s. c 71 s 4 are each amended to read as follows:

Upon receipt of the mail ballot, the voter shall mark it, sign the return identification envelope supplied with the ballot, and comply with the instructions provided with the ballot. The voter may return the marked ballot to the county auditor (~~by United States mail or to any other place of deposit designated by the county auditor~~). The ballot must be returned in the return identification envelope. If mailed, a ballot must be postmarked not later than the date of the election. Otherwise, the ballot must be deposited at the office of the county auditor or the designated place of deposit not later than 8:00 p.m. on the date of the election.

**Sec. 5.** RCW 29.36.130 and 1990 c 59 s 76 are each amended to read as follows:

All mail ballots authorized by RCW 29.36.120 or section 2 of this act shall contain the same offices, names of candidates, and propositions to be voted upon, including precinct offices, as if the ballot had been voted in person at the polling place. Except as otherwise provided in ~~((RCW 29.36.120 and 29.36.122 through 29.36.126 and 29.36.139, such))~~ this chapter, mail ballots shall be issued and canvassed in the same manner as absentee ballots issued pursuant to the request of the voter. The county canvassing board, at the request of the county auditor, may direct that mail ballots be counted on the day of the election. If such count is made, it must be done in secrecy in the presence of ~~((at least three election officials))~~ the canvassing board or their authorized representatives and the results not revealed to any unauthorized person until ~~((the polls have closed))~~ 8:00 p.m. or later if the auditor so directs. If electronic vote tallying devices are used, political party observers shall be afforded the opportunity to be present, and a test of the equipment must be performed as required by RCW 29.33.350 prior to the count of ballots. Political party observers ~~((shall be allowed to count by hand ballots from up to ten precincts selected by the observers))~~ may select at random ballots to be counted manually as provided by RCW 29.54.025. Any violation of the secrecy of such count shall be subject to the same penalties as provided for in RCW 29.85.225.

**Sec. 6.** RCW 29.36.139 and 1983 1st ex.s. c 71 s 6 are each amended to read as follows:

(1) A mail ballot shall be counted only if it is returned in the return identification envelope, if the envelope is signed by the registered voter to whom the ballot is issued, and if the signature is verified as provided in this subsection. The county auditor shall verify the signature of each voter on the return identification envelope with the signature on the voter's registration record. ~~((If the county auditor determines that a registered voter to whom a replacement ballot has been issued has voted more than once, the county auditor shall not count any ballot cast by that voter. The county auditor must notify both the county prosecuting attorney and the state attorney general of every instance in which a voter has voted more than once.))~~ A person who votes or attempts to vote more than once in a mail ballot election is subject to the penalties provided in chapter 29.85 RCW.

(2) Any mail ballot may be challenged in the same manner as an absentee ballot.

**Sec. 7.** RCW 29.36.150 and 1987 c 346 s 19 are each amended to read as follows:

The secretary of state shall adopt rules ~~((not inconsistent with the provisions of this chapter))~~ to:

(1) Establish standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;

(2) Establish standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;

(3) Provide uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections; and

(4) Facilitate the operation of the provisions of this chapter regarding out-of-state voters, overseas voters, and service voters.

The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors.

**Sec. 8.** RCW 29.10.180 and 1991 c 363 s 31 are each amended to read as follows:

(1) The county auditor may enter one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor finds that information received under such a contract gives the appearance that a voter has changed his or her residence address, the auditor shall notify the voter concerning the requirements of state and federal laws governing voter registration and residence.

(2) Whenever any vote-by-mail ballot, notification to voters following reprecincting of the county, notification to voters of selection to serve on jury duty, notification under subsection (1) of this section, or initial voter identification card is returned by the postal service as undeliverable, the county auditor shall, in every instance, inquire into the validity of the registration of that voter.

(3) The county auditor shall initiate his or her inquiry by sending, by first-class mail, a written notice to the challenged voter at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter. The county auditor shall not request any restriction on the forwarding of such notice by the postal service. The notice shall contain the nature of the inquiry and provide a suitable form for reply. The notice shall also contain a warning that the county auditor must receive a response within ninety days from the date of mailing the notice of inquiry in a case resulting from a returned vote-by-mail ballot or forty-five days from the date of mailing in all other cases or the individual's voter registration will be canceled.

(4) The voter, in person or in writing, may state that the information on the permanent voter registration record is correct or may request a change in the address information on the permanent registration record no later than the ninetieth day or forty-fifth day, as appropriate, after the date of mailing the inquiry.

(5) Upon the timely receipt of a response signed by the voter, the county auditor shall consider the inquiry satisfied and will make any address corrections requested by the voter on the permanent registration record. The county auditor shall cancel the registration of a voter who fails to respond to the notice of inquiry within ninety days after the date of mailing the notice in a case resulting from a returned vote-by-mail ballot, or, in all other cases, within forty-five days after the date of mailing.

(6) The county auditor shall notify any voter whose registration has been canceled by sending, by first class mail, a written notice to the address indicated on the voter's permanent registration record and to any other address to which the original inquiry was sent. Upon receipt of a satisfactory voter response, the auditor shall reinstate the voter.

(7) A voter whose registration has been canceled under this section and who offers to vote at the next ensuing election shall be issued a questioned ballot. Upon receipt of such a questioned ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration shall be immediately reinstated, and the voter's questioned ballot shall be counted. If the original cancellation was not in error, the voter shall be afforded the opportunity to reregister at his or her correct address, and the voter's questioned ballot shall not be counted.

Passed the House March 16, 1993.

Passed the Senate April 21, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 418

[House Bill 1646]

### ONGOING ABSENTEE VOTER STATUS—EXPANDED ELIGIBILITY

Effective Date: 7/25/93

AN ACT Relating to ongoing absentee voter status; amending RCW 29.36.013; and repealing RCW 29.36.016.

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

**Sec. 1.** RCW 29.36.013 and 1991 c 81 s 30 are each amended to read as follows:

Any ~~((disabled))~~ voter ~~((or any voter over the age of sixty-five))~~ may apply, in writing, for status as an ongoing absentee voter. Each ~~((such voter shall be granted that status by his or her county auditor and))~~ qualified applicant shall automatically receive an absentee ballot for each ensuing election for which he or she is entitled to vote and need not submit a separate request for each election. Ballots received from ongoing absentee voters shall be validated, processed, and tabulated in the same manner as other absentee ballots.

Status as an ongoing absentee voter shall be terminated upon any of the following events:

- (1) The written request of the voter;
- (2) The death or disqualification of the voter;
- (3) The cancellation of the voter's registration record; or
- (4) The return of an ongoing absentee ballot as undeliverable~~((+or~~

~~(5) January 1st of each odd-numbered year).~~

NEW SECTION. Sec. 2. RCW 29.36.016 and 1985 c 273 s 3 are each repealed.

Passed the House March 16, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

**CHAPTER 419**

[Substitute House Bill 1727]

**RELEASE OF ALIEN OFFENDERS SUBJECT TO DEPORTATION**

**Effective Date:** 7/25/93

AN ACT Relating to alien offenders; adding a new section to chapter 9.94A RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.94A RCW to read as follows:

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and naturalization service for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee find that such release is in the best interests of the state of Washington. Further, releases under this section may occur only with the approval of the sentencing court and the prosecuting attorney of the county of conviction.

(3) No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030, or any other offense that is a crime against a person.

(4) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and naturalization service for deportation. Upon the release of an offender to the immigration and naturalization service, the department shall



issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect until the expiration of the offender's conditional release.

(5) Upon arrest of an offender, the department shall seek extradition as necessary and the offender shall be returned to the department for completion of the unserved portion of the offender's term of total confinement. The offender shall also be required to fully comply with all the terms and conditions of the sentence.

(6) Alien offenders released to the immigration and naturalization service for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(7) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(8) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 420

[Engrossed Substitute House Bill 1734]

### ADDITIONAL COURT OF APPEALS JUDGES AUTHORIZED

Effective Date: 5/15/93

AN ACT Relating to adding new judges to the court of appeals; amending RCW 2.06.020; adding a new section to chapter 2.06 RCW; and declaring an emergency.

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

**Sec. 1.** RCW 2.06.020 and 1989 c 328 s 10 are each amended to read as follows:

The court shall have three divisions, one of which shall be headquartered in Seattle, one of which shall be headquartered in Spokane, and one of which shall be headquartered in Tacoma:

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

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

(b) District 2 shall consist of Snohomish county and shall have two judges; and

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

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

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

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

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

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

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

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

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat and Yakima counties and shall have ~~((one))~~ two judges.

NEW SECTION. Sec. 2. A new section is added to chapter 2.06 RCW to read as follows:

(1) Any judicial position created by section 1, chapter . . . , Laws of 1993 (section 1 of this act) shall be effective only if that position is specifically funded and is referenced by division and district in an omnibus appropriations act.

(2)(a) The full term of office for the judicial positions authorized pursuant to this act shall be six years.

(b) The authorized judicial positions shall be filled at the general election in the November immediately preceding the beginning of the full term except as provided in (d) and (e) of this subsection.

(c) The six-year terms shall be staggered as provided in (c)(i) through (iii) of this subsection.

(i) In the first division, the initial full terms of six years for the two positions in district 1 shall begin the second Monday in January following the general election held in November 1993. If the effective dates for the judicial positions are later than the deadline to include them in the November 1993 election, the initial full terms shall begin the second Monday in January following the general election held in November 1999. The initial full term of six years for the position in district 3 shall begin on the second Monday in January following the general election held in November 1996. If the effective date for the judicial position is later than the deadline to include it in the November 1996 election, the initial full term shall begin the second Monday in January following the general election held in November 2002.

(ii) In the second division, the initial full term of six years for the position in district 2 shall begin the second Monday in January following the general election held in November 1994. If the effective date of the judicial position is later than the deadline to include it in the November 1994 election the initial full term shall begin the second Monday in January following the general election held in November 2000. The initial full term for the position in district 3 shall begin the second Monday in January following the general election held in November 1998. If the effective date of the judicial position is later than the

deadline to include it in the November 1998 election, the initial full term shall begin the second Monday in January following the general election held in November 2004.

(iii) In the third division, the initial full term of six years for the position in district 3 shall begin the second Monday in January following the general election held in November 1994. If the effective date of the judicial position is later than the deadline to include it in the November 1994 election, the initial full term will begin the second Monday in January following the general election held in November 2000.

(d) Upon becoming effective pursuant to subsection (1) of this section, the governor shall appoint judges to the additional judicial positions authorized in section 1, chapter . . . , Laws of 1993 (section 1 of this act). The appointed judges shall hold office until the second Monday in January following the general election following the effective date of the position. The appointed judges and other judicial candidates are entitled to run for the judicial position at the general election following appointment.

(e) The initial election for these positions shall be held in November following the effective date of the position. If the initial election of a newly authorized position is not held on a date which corresponds to the beginning of a full term as specified in (c)(i) through (iii) of this subsection, the election shall be for a partial term.

**NEW SECTION.** Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 421

[Engrossed Substitute House Bill 1818]

### ASSISTANCE TO MILITARY IMPACTED COMMUNITIES

Effective Date: 7/25/93

AN ACT Relating to military dependent communities; adding a new section to chapter 43.06 RCW; and creating a new section.

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

**NEW SECTION.** Sec. 1. The legislature finds that military base expansions, closures, and defense procurement contract cancellations may have extreme economic impacts on communities and firms. The legislature began to address this concern in 1990 by establishing the community diversification program in the department of community development. While this program has

helped military dependent communities begin the long road to diversification, base expansions or closures or major procurement contract reductions in the near future will find these communities unable to respond adequately, endangering the health, safety, and welfare of the community. The legislature intends to target emergency state assistance to military dependent communities significantly impacted by defense spending. The emergency state assistance and the long-term strategy should be driven by the impacted community and consistent with the state plan for diversification required under RCW 43.63A.450(4).

NEW SECTION. Sec. 2. A new section is added to chapter 43.06 RCW to read as follows:

(1) The governor may, by executive order, after consultation with or notification of the executive-legislative committee on economic development created by chapter . . . (Senate Bill No. 5300), Laws of 1993, declare a community to be a "military impacted area." A "military impacted area" means a community or communities, as identified in the executive order, that experience serious social and economic hardships because of a change in defense spending by the federal government in that community or communities.

(2) If the governor executes an order under subsection (1) of this section, the governor shall establish a response team to coordinate state efforts to assist the military impacted community. The response team may include, but not be limited to, one member from each of the following agencies: (a) The department of community development; (b) the department of trade and economic development; (c) the department of social and health services; (d) the employment security department; (e) the state board for community and technical colleges; (f) the higher education coordinating board; (g) the department of transportation; and (h) the Washington energy office. The governor may appoint a response team coordinator. The governor shall seek to actively involve the impacted community or communities in planning and implementing a response to the crisis. The governor may seek input or assistance from the community diversification advisory committee, and the governor may establish task forces in the community or communities to assist in the coordination and delivery of services to the local community. The state and community response shall consider economic development, human service, and training needs of the community or communities impacted.

(3) The governor shall report at the beginning of the next legislative session to the legislature and the executive-legislative committee on economic development created by chapter . . . (Senate Bill No. 5300), Laws of 1993, as to the designation of a military impacted area. The report shall include recommendations regarding whether a military impacted area should become eligible for (a) funding provided by the community economic revitalization board, public facilities construction loan revolving account, Washington state development loan fund, basic health plan, the public works assistance account, department of trade and economic development, employment security department, and department of

transportation; (b) training for dislocated defense workers; or (c) services for dislocated defense workers.

Passed the House April 22, 1993.

Passed the Senate April 21, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 422

[Engrossed Substitute House Bill 2026]

### FETAL ALCOHOL SYNDROME PREVENTION

Effective Date: 7/25/93

AN ACT Relating to notice about fetal alcohol syndrome; adding a new section to chapter 66.08 RCW; adding new sections to Title 70 RCW; and creating new sections.

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

NEW SECTION. **Sec. 1.** The United States surgeon general warns that women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. The legislature finds that these defects include fetal alcohol syndrome, a birth defect that causes permanent antisocial behavior in the sufferer, disrupts the functions of his or her family, and, at an alarmingly increasing rate, extracts a safety and fiscal toll on society.

NEW SECTION. **Sec. 2.** A new section is added to chapter 66.08 RCW to read as follows:

The board shall cause to be posted in conspicuous places, in a number determined by the board, within each state liquor store, notices in print not less than one inch high warning persons that consumption of alcohol shortly before conception or during pregnancy may cause birth defects, including fetal alcohol syndrome and fetal alcohol effects.

NEW SECTION. **Sec. 3.** The legislature recognizes that the use of alcohol and other drugs during pregnancy can cause medical, psychological, and social problems for women and infants. The legislature further recognizes that communities are increasingly concerned about this problem and the associated costs to the mothers, infants, and society as a whole. The legislature recognizes that the department of health and other agencies are focusing on primary prevention activities to reduce the use of alcohol or drugs during pregnancy but few efforts have focused on secondary prevention efforts aimed at intervening in the lives of women already involved in the use of alcohol or other drugs during pregnancy. The legislature recognizes that the best way to prevent problems for chemically dependent pregnant women and their resulting children is to engage the women in alcohol or drug treatment. The legislature acknowledges that treatment professionals find pretreatment services to clients to be important in engaging women in alcohol or drug treatment. The legislature

further recognizes that pretreatment services should be provided at locations where chemically dependent women are likely to be found, including public health clinics and domestic violence or homeless shelters. Therefore the legislature intends to prevent the detrimental effects of alcohol or other drug use to women and their resulting infants by promoting the establishment of local programs to help facilitate a woman's entry into alcohol or other drug treatment. These programs shall provide secondary prevention services and provision of opportunities for immediate treatment so that women who seek help are welcomed rather than ostracized.

**NEW SECTION.** Sec. 4. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of alcohol use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(3) "Assessment" means an interview with an individual to determine if he or she is chemically dependent and in need of referral to an approved treatment program.

(4) "Chemically dependent individual" means someone suffering from alcoholism or drug addiction, or dependence on alcohol or one or more other psychoactive chemicals.

(5) "Department" means the department of social and health services.

(6) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one family or household member against another.

(7) "Domestic violence program" means a shelter or other program which provides services to victims of domestic violence.

(8) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruptions of social or economic functioning.

(9) "Family or household members" means a family or household member as defined in RCW 10.99.020.

(10) "Pretreatment" means the period of time prior to an individual's enrollment in alcohol or drug treatment.

(11) "Pretreatment services" means activities taking place prior to treatment that include identification of individuals using alcohol or drugs, education, assessment of their use, evaluation of need for treatment, referral to an approved

treatment program, and advocacy on a client's behalf with social service agencies or others to ensure and coordinate a client's entry into treatment.

(12) "Primary prevention" means providing information about the effects of alcohol or drug use to individuals so they will avoid using these substances.

(13) "Secondary prevention" means identifying and obtaining an assessment on individuals using alcohol or other drugs for referral to treatment when indicated.

(14) "Secretary" means the secretary of the department of social and health services.

(15) "Treatment" means the broad range of emergency detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to chemically dependent individuals and their families.

(16) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of chemically dependent individuals.

NEW SECTION. Sec. 5. The secretary shall develop and promote statewide secondary prevention strategies designed to increase the use of alcohol and drug treatment services by women of child-bearing age, before, during, and immediately after pregnancy. These efforts are conducted through the division of alcohol and substance abuse. The secretary shall:

(1) Promote development of three pilot demonstration projects in the state to be called pretreatment projects for women of child bearing age.

(2) Ensure that two of the projects are located in public health department clinics that provide maternity services and one is located with a domestic violence program.

(3) Hire three certified chemical dependency counselors to work as substance abuse educators in each of the three demonstration projects. The counselors may rotate between more than one clinic or domestic violence program. The chemical dependency counselor for the domestic violence program shall also be trained in domestic violence issues.

(4) Ensure that the duties and activities of the certified chemical dependency counselors include, at a minimum, the following:

(a) Identifying substance-using pregnant women in the health clinics and domestic violence programs;

(b) Educating the women and agency staff on the effects of alcohol or drugs on health, pregnancy, and unborn children;

(c) Determining the extent of the women's substance use;

(d) Evaluating the women's need for treatment;

(e) Making referrals for chemical dependency treatment if indicated;

(f) Facilitating the women's entry into treatment; and

(g) Advocating on the client's behalf with other social service agencies or others to ensure and coordinate clients into treatment.

(5) Ensure that administrative costs of the department are limited to ten percent of the funds appropriated for the project.

**NEW SECTION. Sec. 6.** If specific funding for the purposes of sections 3, 4, and 5 of this act, referencing these sections by bill and section number, is not provided by June 30, 1993, in the omnibus appropriations act, sections 3, 4, and 5 of this act shall be null and void.

**NEW SECTION. Sec. 7.** Sections 4 and 5 of this act are each added to Title 70 RCW.

Passed the House April 24, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 423**

[House Bill 1993]

**EDUCATIONAL ASSISTANCE TO PROSPECTIVE TEACHERS  
AND HEALTH PROFESSIONALS—REVISIONS**

**Effective Date: 7/25/93**

AN ACT Relating to educational assistance to prospective teachers and health professionals; and amending RCW 28B.102.060 and 28B.115.120.

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

**Sec. 1.** RCW 28B.102.060 and 1991 c 164 s 6 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they teach for ten years in the public schools of the state of Washington, under rules adopted by the board.

(2) ~~((The terms of the repayment, including deferral of the interest, shall be consistent with the terms of the federal guaranteed loan program))~~ The interest rate shall be eight percent for the first four years of repayment and ten percent beginning with the fifth year of repayment.

(3) The period for repayment shall be ten years, with payments of principal and interest accruing quarterly commencing nine months from the date the participant completes or discontinues the course of study. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in a public school until the entire repayment obligation is satisfied or the borrower ceases to teach at a public school in this state. Should the participant cease to teach at a public school in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the



next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017.

**Sec. 2.** RCW 28B.115.120 and 1991 c 332 s 25 are each amended to read as follows:

(1) Participants in the health professional loan repayment and scholarship program who are awarded scholarships incur an obligation to repay the scholarship, with interest, unless they serve the required service obligation in a health professional shortage area in the state of Washington.

(2) ~~((The terms of the repayment, including deferral and rate of interest, shall be consistent with the terms of the federal guaranteed student loan program))~~ The interest rate shall be eight percent for the first four years of repayment and ten percent beginning with the fifth year of repayment.

(3) The period for repayment shall coincide with the required service obligation, with payments of principal and interest accruing quarterly commencing no later than nine months from the date the participant completes or discontinues the course of study or completes or discontinues the required residency. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a health professional shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in a health professional shortage area of this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the

participant's repayment obligation is satisfied. Except for circumstances beyond their control, participants who serve less than the required service obligation shall be obliged to repay to the program an amount equal to twice the total amount paid by the program on their behalf.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the board and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant scholarships to eligible students.

(7) Sponsoring communities who financially contribute to the eligible financial expenses of eligible medical students may enter into agreements with the student to require repayment should the student not serve the required service obligation in the community as a primary care physician. The board may develop criteria for the content of such agreements with respect to reasonable provisions and obligations between communities and eligible students.

(8) The board may make exceptions to the conditions for participation and repayment obligations should circumstances beyond the control of individual participants warrant such exceptions.

Passed the House March 11, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 424

[Substitute House Bill 1766]

## AUTO REPAIR FACILITIES—REVISED CONSUMER PROTECTION REQUIREMENTS

Effective Date: 1/1/94

AN ACT Relating to automotive repair; amending RCW 46.71.060, 46.71.070, and 46.71.090; adding new sections to chapter 46.71 RCW; creating a new section; repealing RCW 46.71.010, 46.71.020, 46.71.030, 46.71.040, 46.71.043, 46.71.047, 46.71.050, and 46.71.065; and providing an effective date.

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

**NEW SECTION.** Sec. 1. The automotive repair industry supports good communication between auto repair facilities and their customers. The legislature recognizes that improved communications and accurate representations between automotive repair facilities and the customers will: Increase consumer confidence; reduce the likelihood of disputes arising; clarify repair facility lien interests; and promote fair and nondeceptive practices, thereby enhancing the safety and reliability of motor vehicles serviced by auto repair facilities in the state of Washington.

**NEW SECTION.** Sec. 2. For purposes of this chapter:

(1) An "after market body part" or "nonoriginal equipment manufacturer body part" is an exterior body panel or nonstructural body component manufactured by someone other than the original equipment manufacturer and supplied through suppliers other than those in the manufacturer's normal distribution channels.

(2) "Automotive repair" includes but is not limited to:

(a) All repairs to vehicles subject to chapter 46.16 RCW that are commonly performed in a repair facility by a motor vehicle technician including the diagnosis, installation, exchange, or repair of mechanical or electrical parts or units for any vehicle, the performance of any electrical or mechanical adjustment to any vehicle, or the performance of any service work required for routine maintenance or repair of any vehicle. However, commercial fleet repair or maintenance transactions involving two or more vehicles or ongoing service or maintenance contracts involving vehicles used primarily for business purposes are not included;

(b) All work in facilities that perform one or more specialties within the automotive repair service industry including, but not limited to, body collision repair, refinishing, brake, electrical, exhaust repair or installation, frame, unibody, front-end, radiators, tires, transmission, tune-up, and windshield; and

(c) The removal, replacement, or repair of exterior body panels, the removal, replacement, or repair of structural and nonstructural body components, the removal, replacement, or repair of collision damaged suspension components, and the refinishing of automotive components.

(3) "Automotive repair facility" or "repair facility" means any person, firm, association, or corporation who for compensation engages in the business of automotive repair or diagnosis, or both, of malfunctions of motor vehicles subject

to licensure under chapter 46.16 RCW and repair and refinishing auto-body collision damage as well as overall refinishing and cosmetic repairs.

(4) A "rebuilt" part consists of a used assembly that has been dismantled and inspected with only the defective parts being replaced.

(5) A "remanufactured" part consists of a used assembly that has been dismantled with the core parts being remachined and all other parts replaced with new parts so as to provide performance comparable to that found originally.

**NEW SECTION. Sec. 3.** (1) Except as otherwise provided in section 5 of this act, all estimates that exceed one hundred dollars shall be in writing and include the following information: The date; the name, address, and telephone number of the repair facility; the name, address, and telephone number, if available, of the customer or the customer's designee; if the vehicle is delivered for repair, the year, make, and model of the vehicle, the vehicle license plate number or last eight digits of the vehicle identification number, and the odometer reading of the vehicle; a description of the problem reported by the customer or the specific repairs requested by the customer; and a choice of alternatives described in section 5 of this act.

(2) Whether or not a written estimate is required, parts and labor provided by an automotive repair facility shall be clearly and accurately recorded in writing on an invoice and shall include, in addition to the information listed in subsection (1) of this section, the following information: A description of the repair or maintenance services performed on the vehicle; a list of all parts supplied, identified by name and part number, if available, part kit description or recognized package or shop supplies, if any, and an indication whether the parts supplied are rebuilt, or used, if applicable or where collision repair is involved, after market body parts or nonoriginal equipment manufacturer body parts, if applicable; the price per part charged, if any, and the total amount charged for all parts; the total amount charged for all labor, if any; and the total charge. Parts and labor do not need to be separately disclosed if pricing is expressed as an advertised special by the job, a predisclosed written repair menu item, or a routine service package.

(3) Notwithstanding subsection (2) of this section, if the repair work is performed under warranty or without charge to the customer, other than an applicable deductible, the repair facility shall provide either an itemized list of the parts supplied, or describe the service performed on the vehicle, but the repair facility is not required to provide any pricing information for parts or labor.

(4) A copy of the estimate, unless waived, shall be provided to the customer or customer's designee prior to providing parts or labor as required under section 5 of this act. A copy of the invoice shall be provided to the customer upon completion of the repairs.

(5) Only material omissions, under this section, are actionable in a court of law or equity.

NEW SECTION. **Sec. 4.** Except for parts covered by a manufacturer's or other warranty or parts that must be returned to a distributor, remanufacturer, or rebuilder, the repair facility shall return replaced parts to the customer at the time the work is completed if the customer requested the parts at the time of authorization of the repair. If a customer at the time of authorization of the repair requests the return of a part that must be returned to the manufacturer, remanufacturer, distributor, recycler, or rebuilder, or must be disposed of as required by law, the repair facility shall offer to show the part to the customer. The repair facility need not show a replaced part if no charge is being made for the replacement part.

NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (3) of this section, a repair facility prior to providing parts or labor shall provide the customer or the customer's designee with a written price estimate of the total cost of the repair, including parts and labor, or where collision repair is involved, after market body parts or nonoriginal equipment manufacturer body parts, if applicable, or offer the following alternatives:

"YOU ARE ENTITLED TO A WRITTEN PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. YOU ARE ALSO ENTITLED TO REQUIRE THE REPAIR FACILITY TO OBTAIN YOUR ORAL OR WRITTEN AUTHORIZATION TO EXCEED THE WRITTEN PRICE ESTIMATE. YOUR SIGNATURE OR INITIALS WILL INDICATE YOUR SELECTION.

1. I request an estimate in writing before you begin repairs. Contact me if the price will exceed this estimate by more than ten percent.
2. Proceed with repairs but contact me if the price will exceed \$. . . . .
3. I do not want a written estimate.

..... (Initial or signature)

Date: ..... Time: .... "

(2) The repair facility may not charge the customer more than one hundred ten percent, exclusive of retail sales tax, of the total shown on the written price estimate. Neither of these limitations apply if, before providing additional parts or labor the repair facility obtains either the oral or written authorization of the customer, or the customer's designee, to exceed the written price estimate. The repair facility or its representative shall note on the estimate the date and time of obtaining an oral authorization, the additional parts and labor required, the estimated cost of the additional parts and labor, or where collision repair is involved, after market body parts or nonoriginal equipment manufacturer body parts, if applicable, the name or identification number of the employee who obtains the authorization, and the name and telephone number of the person authorizing the additional costs.

(3) A written estimate shall not be required when the customer's motor vehicle or component has been brought to an automotive repair facility's regular place of business without face-to-face contact between the customer and the repair facility. Face-to-face contact means actual in-person discussion between the customer or his or her designee and the agent or employee of the automotive repair facility authorized to intake vehicles or components. However, prior to providing parts and labor, the repair facility must obtain either the oral or written authorization of the customer or the customer's designee. The repair facility or its representative shall note on the estimate or repair order the date and time of obtaining an oral authorization, the total amount authorized, the name or identification number of the employee who obtains the authorization, and the name of the person authorizing the repairs.

NEW SECTION. Sec. 6. An automotive repair facility shall post in a prominent place on the business premises one or more signs, readily visible to customers, in the following form:

**"YOUR CUSTOMER RIGHTS**

**YOU ARE ENTITLED BY LAW TO:**

1. A WRITTEN ESTIMATE FOR REPAIRS WHICH WILL COST MORE THAN ONE HUNDRED DOLLARS, UNLESS WAIVED OR ABSENT FACE-TO-FACE CONTACT (SEE ITEM 4 BELOW);
2. RETURN OR INSPECTION OF ALL REPLACED PARTS, IF REQUESTED AT TIME OF REPAIR AUTHORIZATION;
3. AUTHORIZE ORALLY OR IN WRITING ANY REPAIRS WHICH EXCEED THE ESTIMATED TOTAL PRESALES TAX COST BY MORE THAN TEN PERCENT;
4. AUTHORIZE ANY REPAIRS ORALLY OR IN WRITING IF YOUR VEHICLE IS LEFT WITH THE REPAIR FACILITY WITHOUT FACE-TO-FACE CONTACT BETWEEN YOU AND THE REPAIR FACILITY PERSONNEL.

**IF YOU HAVE AUTHORIZED A REPAIR IN ACCORDANCE WITH THE ABOVE INFORMATION YOU ARE REQUIRED TO PAY FOR THE COSTS OF THE REPAIR PRIOR TO TAKING THE VEHICLE FROM THE PREMISES."**

The first line of each sign shall be in letters not less than one and one-half inch in height and the remaining lines shall be in letters not less than one-half inch in height.

NEW SECTION. Sec. 7. An automotive repair facility that fails to comply with the estimate requirements of section 5 of this act is barred from recovering in an action to recover for automotive repairs any amount in excess of one hundred ten percent of the amount authorized by the customer, or the customer's

designee, unless the repair facility proves by a preponderance of the evidence that its conduct was reasonable, necessary, and justified under the circumstances. In an action to recover for automotive repairs the prevailing party may, at the discretion of the court, recover the costs of the action and reasonable attorneys' fees.

**NEW SECTION. Sec. 8.** A repair facility that fails to comply with section 4, 5, or 6 of this act is barred from asserting a possessory or chattel lien for the amount of the unauthorized parts or labor upon the motor vehicle or component.

**NEW SECTION. Sec. 9.** Each of the following acts or practices are unlawful:

(1) Advertising that is false, deceptive, or misleading. A single or isolated media mistake does not constitute a false, deceptive, or misleading statement or misrepresentation under this section;

(2) Materially understating or misstating the estimated price for a specified repair procedure;

(3) Retaining payment from a customer for parts not delivered or installed or a labor operation or repair procedure that has not actually been performed;

(4) Unauthorized operation of a customer's vehicle for purposes not related to repair or diagnosis;

(5) Failing or refusing to provide a customer, upon request, a copy, at no charge, of any document signed by the customer;

(6) Retaining duplicative payment from both the customer and the warranty or extended service contract provider for the same covered component, part, or labor;

(7) Charging a customer for unnecessary repairs. For purposes of this subsection "unnecessary repairs" means those for which there is no reasonable basis for performing the service. A reasonable basis includes, but is not limited to: (a) That the repair service is consistent with specifications established by law or the manufacturer of the motor vehicle, component, or part; (b) that the repair is in accordance with accepted industry standards; or (c) that the repair was performed at the specific request of the customer.

**NEW SECTION. Sec. 10.** The repair facility shall make available, upon request, a copy of any express warranty provided by the repair facility to the customer that covers repairs performed on the vehicle.

**Sec. 11.** RCW 46.71.060 and 1982 c 62 s 7 are each amended to read as follows:

Every automotive (~~repairman~~) repair facility shall retain and make available for inspection, upon request by the customer or the customer's authorized representative, true copies of the written price estimates and invoices required under this chapter for at least one year after the date on which the repairs were performed.

**Sec. 12.** RCW 46.71.070 and 1982 c 62 s 9 are each amended to read as follows:

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair (~~act or practice in violation of~~) or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. In an action under chapter 19.86 RCW due to an automotive (~~repairman's~~) repair facility's charging (~~or attempt to charge~~) a customer an amount in excess of one hundred ten percent of the amount authorized by the customer, a violation shall not be found if the automotive (~~repairman~~) repair facility proves by a preponderance of the evidence that (~~his or her~~) its conduct was reasonable, necessary, and justified under the circumstances.

Notwithstanding RCW 46.64.050, no violation of this chapter shall give rise to criminal liability under that section.

**Sec. 13.** RCW 46.71.090 and 1982 c 62 s 11 are each amended to read as follows:

When the department of revenue issues a registration certificate under RCW 82.32.030 to an automotive (~~repairman~~) repair facility, it shall give written notice to the person of the requirements of this chapter in a manner prescribed by the director of revenue. The department of revenue shall thereafter give the notice on an annual basis in conjunction with the business and occupation tax return provided to each person holding a registration certificate as an automotive (~~repairman~~) repair facility.

NEW SECTION. **Sec. 14.** The attorney general shall study the recommendations of the national association of attorneys general automotive repair task force and make findings on the possible use of the task force's recommendations in this state. The attorney general may submit a report of its findings to the appropriate standing committees of the legislature by December 1, 1994.

NEW SECTION. **Sec. 15.** If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to persons and circumstances shall not be affected thereby.

NEW SECTION. **Sec. 16.** The following acts or parts of acts are each repealed:

- (1) RCW 46.71.010 and 1982 c 62 s 1 & 1977 ex.s. c 280 s 1;
- (2) RCW 46.71.020 and 1977 ex.s. c 280 s 2;
- (3) RCW 46.71.030 and 1982 c 62 s 2 & 1977 ex.s. c 280 s 3;
- (4) RCW 46.71.040 and 1982 c 62 s 3 & 1977 ex.s. c 280 s 4;
- (5) RCW 46.71.043 and 1982 c 62 s 4;
- (6) RCW 46.71.047 and 1982 c 62 s 5;



(7) RCW 46.71.050 and 1982 c 62 s 6 & 1977 ex.s. c 280 s 5; and

(8) RCW 46.71.065 and 1982 c 62 s 8.

**NEW SECTION. Sec. 17.** Sections 1 through 10 of this act are each added to chapter 46.71 RCW.

**NEW SECTION. Sec. 18.** This act shall take effect January 1, 1994.

Passed the House April 20, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 425

[Substitute House Bill 1752]

### TELEPHONE RELAY SERVICE—FUNDING AND ELIGIBILITY—REVISIONS

Effective Date: 5/15/93

AN ACT Relating to telephone relay service; amending RCW 43.20A.725; and declaring an emergency.

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

**Sec. 1.** RCW 43.20A.725 and 1992 c 144 s 3 are each amended to read as follows:

(1) The department shall maintain a program whereby TTs, signal devices, ~~((a TRS))~~ and amplifying accessories capable of serving the needs of the hearing and speech impaired shall be provided ~~((at no charge additional to the basic exchange rate))~~ under the standards established in subsection (11) of this section to an individual of school age or older((?)):

(a) Who is certified as hearing impaired by a licensed physician, audiologist, or a qualified state agency, and to any subscriber that is an organization representing the hearing impaired, as determined and specified by the TRS program advisory committee; or

(b) Who is certified as speech impaired by a licensed physician, speech pathologist, or a qualified state agency, and to any subscriber that is an organization representing the speech impaired, as determined and specified by the TRS program advisory committee.

For the purpose of this section, certification implies that individuals cannot use the telephone for expressive or receptive communications due to hearing or speech impairment.

(2) The office shall award contracts on a competitive basis, to qualified persons for which eligibility to contract is determined by the office, for the distribution and maintenance of such TTs, signal devices, and amplifying accessories as shall be determined by the office. When awarding such contracts, the office may consider the quality of equipment and, with the director's approval, may award contracts on a basis other than cost. Such contracts may

include a provision for the employment and use of a qualified trainer and the training of recipients in the use of such devices.

(3) The office shall establish and implement a policy for the ultimate responsibility for recovery of TTs, signal devices, and amplifying accessories from recipients who have been provided with the equipment without cost and who are moving from this state or who for other reasons are no longer using them.

(4) Pursuant to recommendations of the TRS program advisory committee, until July 26, 1993, the office shall maintain a program whereby a relay system will be provided state-wide using operator intervention to connect hearing impaired and speech impaired persons and offices or organizations representing the hearing impaired and speech impaired, as determined and specified by the TDD advisory committee pursuant to RCW 43.20A.730. The relay system shall be the most cost-effective possible and shall operate in a manner consistent with federal requirements for such systems.

(5) Pursuant to the recommendations of the TDD task force report of December 1991, and with the express purpose of maintaining state control and jurisdiction, the office shall seek certification by the federal communications commission of the state-wide relay service.

(6) The office shall award contracts for the operation and maintenance of the state-wide relay service. The initial contract shall be for service commencing on or before July 26, 1993. The contract shall be awarded to an individual company registered as a telecommunications company by the utilities and transportation commission, to a group of registered telecommunications companies, or to any other company or organization determined by the office as qualified to provide relay services, contingent upon that company or organization being approved as a registered telecommunications company prior to final contract approval.

(7) The program shall be funded by a telecommunications relay service (TRS) excise tax applied to each switched access line provided by the local exchange companies. The office shall determine, in consultation with the TRS program advisory committee, the ~~((amount of money))~~ budget needed to fund the program on an annual basis, including both operational costs and a reasonable amount for capital improvements such as equipment upgrade and replacement. ~~((That information))~~ The budget proposed by the office, together with documentation and supporting materials, shall be submitted to the office of financial management for review and approval. The approved budget shall be given by the department in an annual budget to the utilities and transportation commission no later than March 1 prior to the beginning of the fiscal year. The utilities and transportation commission shall then determine the amount of TRS excise tax to be placed on each access line and shall inform each local exchange company of this amount no later than May 15. The utilities and transportation commission shall determine the amount of TRS excise tax by dividing the total of the program budget, as submitted by the office, by the total number of access lines, and shall not exercise any further oversight of the program under this subsection.

The TRS excise tax shall not exceed (~~ten~~) nineteen cents per month per access line. Each local exchange company shall impose the amount of excise tax determined by the commission as of July 1, and shall remit the amount collected directly to the department on a monthly basis. The TRS excise tax shall be separately identified on each ratepayer's bill with the following statement: "Funds federal ADA requirement." All proceeds from the TRS excise tax shall be put into a fund to be administered by the office through the department.

(8) The office shall administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services in accordance with the provisions of RCW 43.20A.725.

(9) The department shall provide the legislature with a biennial report on the operation of the program. The first report shall be provided no later than December 1, 1990, and successive reports every two years thereafter. Reports shall be prepared in consultation with the TRS program advisory committee and the utilities and transportation commission. The reports shall, at a minimum, briefly outline the accomplishments of the program, the number of persons served, revenues and expenditures, the prioritizing of services to those eligible based on such factors as degree of physical handicap or the allocation of the program's revenue between provision of devices to individuals and operation of the state-wide relay service, other major policy or operational issues, and proposals for improvements or changes for the program. The first report shall contain a study which includes examination of like programs in other states, alternative methods of financing the program, alternative methods of using the telecommunications system, advantages and disadvantages of operating the TRS program from within the department, by telecommunications companies, and by a private, nonprofit corporation, and means to limit demand for system usage.

(10) The program shall be consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the deaf or hearing impaired or speech impaired. The department and the utilities and transportation commission shall be responsible for ensuring compliance with federal requirements and shall provide timely notice to the legislature of any legislation that may be required to accomplish compliance.

(11)(a) The department shall provide TTs, signal devices, and amplifying accessories to a person eligible under subsection (1) of this section at no charge in addition to the basic exchange rate if:

(i) The person is eligible for participation in the Washington telephone assistance program under RCW 80.36.470;

(ii) The person's annual family income is equal to or less than one hundred sixty-five percent of the federal poverty level; or

(iii) The person is a child eighteen years of age or younger with a family income less than or equal to two hundred percent of the federal poverty level.

(b) A person eligible under subsection (1) of this section with a family income greater than one hundred sixty-five percent and less than or equal to two

hundred percent of the federal poverty level shall be assessed a charge for the cost of TTs, signal devices, and amplifying accessories based on a sliding scale of charges established by rule adopted by the department.

(c) The department shall charge a person eligible under subsection (l) of this section whose income exceeds two hundred percent of the federal poverty level the cost to the department of purchasing the equipment provided to that person.

(d) The department may waive part or all of the charges assessed under this subsection if the department finds that (i) the eligible person requires telebraille equipment or other equipment of similar cost and (ii) the charges normally assessed for the equipment under this subsection would create an exceptional or undue hardship on the eligible person.

(e) For the purposes of this subsection, certification of family income by the eligible person or the person's guardian or head of household is sufficient to determine eligibility.

**NEW SECTION. Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 426

[Engrossed Substitute House Bill 1760]

### ENFORCEMENT OF CHILD SUPPORT AND SPOUSAL MAINTENANCE ORDERS

**Effective Date:** 7/25/93

AN ACT Relating to obligations for child support and spousal maintenance; and amending RCW 26.18.010, 26.18.020, 26.18.030, 26.18.040, 26.18.050, 26.18.070, 26.18.090, 26.18.100, 26.18.110, 26.18.120, 26.18.140, 26.18.150, 26.18.160, and 26.18.170.

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

**Sec. 1.** RCW 26.18.010 and 1984 c 260 s 1 are each amended to read as follows:

The legislature finds that there is an urgent need for vigorous enforcement of child support and spousal maintenance obligations, and that stronger and more efficient statutory remedies need to be established to supplement and complement the remedies provided in chapters 26.09, 26.21, 26.26, 74.20, and 74.20A RCW.

**Sec. 2.** RCW 26.18.020 and 1989 c 416 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

(2) "Duty of spousal maintenance" means the duty to provide for the needs of a spouse or former spouse imposed under chapter 26.09 RCW.

(3) "Duty of support" means the duty to provide for the needs of a dependent child, which may include necessary food, clothing, shelter, education, and health care. The duty includes any obligation to make monetary payments, to pay expenses, including spousal maintenance in cases in which there is a dependent child, or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

~~((3))~~ (4) "Obligee" means the custodian of a dependent child, the spouse or former spouse, or person or agency, to whom a duty of support or duty of spousal maintenance is owed, or the person or agency to whom the right to receive or collect support or spousal maintenance has been assigned.

~~((4))~~ (5) "Obligor" means the person owing a duty of support or duty of spousal maintenance.

~~((5))~~ (6) "Support or maintenance order" means any judgment, decree, or order of support or spousal maintenance issued by the superior court or authorized agency of the state of Washington; or a judgment, decree, or other order of support or spousal maintenance issued by a court or agency of competent jurisdiction in another state or country, which has been registered or otherwise made enforceable in this state.

~~((6))~~ (7) "Employer" includes the United States government, a state or local unit of government, and any person or entity who pays or owes earnings or remuneration for employment to the obligor.

~~((7))~~ (8) "Earnings" means compensation paid or payable for personal services or remuneration for employment, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support or spousal maintenance obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

~~((8))~~ (9) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld.

~~((9))~~ (10) "Department" means the department of social and health services.

~~((10))~~ (11) "Health insurance coverage" includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or

a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

~~((H))~~ (12) "Insurer" means a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, and shall also include any employer or union which is providing health insurance coverage on a self-insured basis.

(13) "Remuneration for employment" means moneys due from or payable by the United States to an individual within the scope of 42 U.S.C. Sec. 659 and 42 U.S.C. Sec. 662(f).

**Sec. 3.** RCW 26.18.030 and 1984 c 260 s 3 are each amended to read as follows:

(1) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

(2) This chapter applies to any dependent child, whether born before or after June 7, 1984, and regardless of the past or current marital status of the parents, and to a spouse or former spouse.

(3) This chapter shall be liberally construed to assure that all dependent children are adequately supported.

**Sec. 4.** RCW 26.18.040 and 1984 c 260 s 4 are each amended to read as follows:

(1) A proceeding to enforce a duty of support or spousal maintenance is commenced:

(a) By filing a petition for an original action; or

(b) By motion in an existing action or under an existing cause number.

(2) Venue for the action is in the superior court of the county where the dependent child resides or is present, where the obligor or obligee resides, or where the prior support or maintenance order was entered. The petition or motion may be filed by the obligee, the state, or any agency providing care or support to the dependent child. A filing fee shall not be assessed in cases brought on behalf of the state of Washington.

(3) The court retains continuing jurisdiction under this chapter until all duties of either support or spousal maintenance, or both, of the obligor, including arrearages, (~~with respect to the dependent child~~) have been satisfied.

**Sec. 5.** RCW 26.18.050 and 1989 c 373 s 22 are each amended to read as follows:

(1) If an obligor fails to comply with a support or spousal maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or spousal maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing,

at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

(2) Service of the order to show cause shall be by personal service, or in the manner provided in the civil rules of superior court or applicable statute.

(3) If the order to show cause served upon the obligor included a warning that an arrest warrant could be issued for failure to appear, the court may issue a bench warrant for the arrest of the obligor if the obligor fails to appear on the return date provided in the order.

(4) If the obligor contends at the hearing that he or she lacked the means to comply with the support or spousal maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order.

(5) As provided in RCW 26.18.040, the court retains continuing jurisdiction under this chapter and may use a contempt action to enforce a support or maintenance order until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support or maintenance order.

**Sec. 6.** RCW 26.18.070 and 1987 c 435 s 18 are each amended to read as follows:

(1) A petition or motion seeking a mandatory wage assignment in an action under RCW 26.18.040 may be filed by an obligee if the obligor is more than fifteen days past due in child support or spousal maintenance payments in an amount equal to or greater than the (~~(support)~~) obligation payable for one month. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the wage assignment order, including:

(a) That the obligor, stating his or her name and residence, is more than fifteen days past due in child support or spousal maintenance payments in an amount equal to or greater than the (~~(support)~~) obligation payable for one month;

(b) A description of the terms of the (~~(support)~~) order requiring payment of support or spousal maintenance, and the amount past due;

(c) The name and address of the obligor's employer;

(d) That notice by personal service or any form of mail requiring a return receipt, has been provided to the obligor at least fifteen days prior to the obligee seeking a mandatory wage assignment, unless the order for support or maintenance states that the obligee may seek a mandatory wage assignment without notice to the obligor; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source and, if the obligee has received public assistance, that the department of social and health services has been notified in writing of the pending action.

(2) If the court in which a mandatory wage assignment is sought does not already have a copy of the support or maintenance order in the court file, then

the obligee shall attach a copy of the support or maintenance order to the petition or motion seeking the wage assignment.

**Sec. 7.** RCW 26.18.090 and 1984 c 260 s 9 are each amended to read as follows:

(1) The wage assignment order in RCW 26.18.080 shall include:

(a) The maximum amount of current support or spousal maintenance, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement; and

(b) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed fifty percent of the disposable earnings of the obligor. If the amounts to be paid toward the arrearage are specified in the support or spousal maintenance order, then the maximum amount to be withheld is the sum of: Either the current support or spousal maintenance ordered, or both; and the amount ordered to be paid toward the arrearage, or fifty percent of the disposable earnings of the obligor, whichever is less.

(3) The provisions of RCW 6.27.150 do not apply to wage assignments for child support or spousal maintenance authorized under this chapter, but fifty percent of the disposable earnings of the obligor are exempt, and may be disbursed to the obligor.

(4) If an obligor is subject to two or more attachments for child support on account of different obligees, the employer shall, if the nonexempt portion of the obligor's earnings is not sufficient to respond fully to all the attachments, apportion the obligor's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the obligor's nonexempt disposable earnings upon notice to all interested obligees. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute.

(5) If an obligor is subject to two or more attachments for spousal maintenance on account of different obligees, the employer shall, if the nonexempt portion of the obligor's earnings is not sufficient to respond fully to all the attachments, apportion the obligor's nonexempt disposable earnings between or among the various obligees equally. An obligee may seek a court order reapportioning the obligor's nonexempt disposable earnings upon notice to all interested obligees. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute.

**Sec. 8.** RCW 26.18.100 and 1991 c 367 s 20 are each amended to read as follows:

The wage assignment order shall be substantially in the following form:



IN THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON IN AND FOR THE  
COUNTY OF .....

..... ,  
Obligee  
vs.  
..... ,  
Obligor  
..... ,  
Employer

No. ....  
WAGE ASSIGNMENT  
ORDER

THE STATE OF WASHINGTON TO: .....  
Employer  
AND TO: .....  
Obligor

The above-named obligee claims that the above-named obligor is more than fifteen days past due in either child support or spousal maintenance payments, or both, in an amount equal to or greater than the child support or spousal maintenance payable for one month. The amount of the accrued child support or spousal maintenance debt as of this date is . . . . . dollars, the amount of arrearage payments specified in the support or spousal maintenance order (if applicable) is . . . . . dollars per . . . . ., and the amount of the current and continuing support or spousal maintenance obligation under the ((support)) order is . . . . . dollars per . . . . .

You are hereby commanded to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one copy to the Washington state support registry, one copy to the obligee or obligee's attorney, and one copy to the obligor within twenty days after service of this wage assignment order upon you.

If you possess any earnings or other remuneration for employment due and owing to the obligor, then you shall do as follows:

- (1) Withhold from the obligor's earnings or remuneration each month, or from each regular earnings disbursement, the lesser of:
  - (a) The sum of the accrued support or spousal maintenance debt and the current support or spousal maintenance obligation;
  - (b) The sum of the specified arrearage payment amount and the current support or spousal maintenance obligation; or
  - (c) Fifty percent of the disposable earnings or remuneration of the obligor.
- (2) The total amount withheld above is subject to the wage assignment order, and all other sums may be disbursed to the obligor.
- (3) Upon receipt of this wage assignment order you shall make immediate deductions from the obligor's earnings or remuneration and remit to the Washington state support registry or other address specified below the proper amounts at each regular pay interval.

You shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

- (a) The court that the wage assignment has been modified or terminated;
- (b) The Washington state support registry, office of support enforcement that the accrued child support debt has been paid; or
- (c) The court that has entered an order delaying, modifying, or terminating the wage assignment order and has approved an alternate payment plan as provided in RCW 26.23.050(2).

You shall promptly notify the court and the Washington state support registry if and when the employee is no longer employed by you, or if the obligor no longer receives earnings or remuneration from you. If you no longer employ the employee, the wage assignment order shall remain in effect for one year after the employee has left your employment or ~~((your [you]))~~ you are no longer in possession of any earnings or remuneration owed to the employee, whichever is later. You shall continue to hold the wage assignment order during that ~~((one-year))~~ period. If the employee returns to your employment during the one-year period you shall immediately begin to withhold the employee's earnings according to the terms of the wage assignment order. If the employee has not returned to your employment within one year, the wage assignment will cease to have effect at the expiration of the one-year period, unless you still owe the employee earnings or other remuneration.

You shall deliver the withheld earnings or remuneration to the Washington state support registry or other address stated below at each regular pay interval.

You shall deliver a copy of this order to the obligor as soon as is reasonably possible. This wage assignment order has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support or spousal maintenance, or order to withhold or deliver under chapter 74.20A RCW.

WHETHER OR NOT YOU OWE ANYTHING TO THE OBLIGOR,  
YOUR FAILURE TO ANSWER AS REQUIRED MAY MAKE YOU  
LIABLE FOR OBLIGOR'S CLAIMED SUPPORT OR SPOUSAL  
MAINTENANCE DEBT TO THE OBLIGEE OR SUBJECT TO  
CONTEMPT OF COURT.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A  
HEARING IN THE SUPERIOR COURT THAT ISSUED THIS WAGE  
ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH,  
MODIFY, OR TERMINATE THE WAGE ASSIGNMENT ORDER.

DATED THIS . . . . day of . . . ., 19. . .

Obligee,  
or obligee's attorney

Judge/Court Commissioner

Send withheld payments to:

.....  
.....  
.....  
.....  
.....

Sec. 9. RCW 26.18.110 and 1991 c 367 s 21 are each amended to read as follows:

(1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the obligor is employed by or receives earnings or other remuneration from the employer, whether the employer will honor the wage assignment order, and whether there are either multiple child support or spousal maintenance attachments, or both, against the obligor.

(2) If the employer possesses any earnings or remuneration due and owing to the obligor, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The withheld earnings shall be delivered to the Washington state support registry or, if the wage assignment order is to satisfy a duty of spousal maintenance, to the addressee specified in the assignment at each regular pay interval.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

(a) The court that the wage assignment has been modified or terminated;

(b) The Washington state support registry or obligee that the accrued child support or spousal maintenance debt has been paid, provided the wage assignment order contains the language set forth under RCW 26.18.100(~~(2)(b)~~)

(3)(b). The employer shall promptly notify the Washington state support registry when the employee is no longer employed. If the employer no longer employs the employee, the wage assignment order shall remain in effect for one year after the employee has left the employment or the employer has been in possession of any earnings or remuneration owed to the employee, whichever is later. The employer shall continue to hold the wage assignment order during that (~~one-year~~) period. If the employee returns to the employer's employment during the one-year period the employer shall immediately begin to withhold the employee's earnings or remuneration according to the terms of the wage assignment order. If the employee has not returned within one year, the wage assignment shall cease to have effect at the expiration of the one-year period, unless the employer continues to owe remuneration for employment to the obligor; or

(c) The court that has entered an order delaying, modifying, or terminating the wage assignment order and has approved an alternate payment plan as provided in RCW 26.23.050(2).

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if

the remainder is exempt under RCW 26.18.090. The processing fee may not exceed (a) ten dollars for the first disbursement made by the employer to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the clerk.

(5) An order for wage assignment for support for a dependent child entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support, or order to withhold and deliver under chapter 74.20A RCW. An order for wage assignment for spousal maintenance entered under this chapter shall have priority over any other wage assignment or garnishment, except for a wage assignment, garnishment, or order to withhold and deliver under chapter 74.20A RCW for support of a dependent child, and except for another wage assignment or garnishment for spousal maintenance.

(6) An employer who fails to withhold earnings as required by a wage assignment issued under this chapter may be held liable to the obligee for one hundred percent of the support or spousal maintenance debt, or the amount of support or spousal maintenance moneys that should have been withheld from the employee's earnings whichever is the lesser amount, if the employer:

(a) Fails or refuses, after being served with a wage assignment order, to deduct and promptly remit from the unpaid earnings the amounts of money required in the order;

(b) Fails or refuses to submit an answer to the notice of wage assignment after being served; or

(c) Is unwilling to comply with the other requirements of this section.

Liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, and reasonable attorneys' fees.

(7) No employer who complies with a wage assignment issued under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment issued and executed under this chapter. If an employer discharges, disciplines, or refuses to hire an employee in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of damages suffered as a result of the violation and for costs and reasonable attorneys' fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

(9) For wage assignments payable to the Washington state support registry, an employer may combine amounts withheld from various employees into a single payment to the Washington state support registry, if the payment includes a listing of the amounts attributable to each employee and other information as required by the registry.

(10) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.

Sec. 10. RCW 26.18.120 and 1984 c 260 s 12 are each amended to read as follows:

The answer of the employer shall be made on forms, served on the employer with the wage assignment order, substantially as follows:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF .....

..... No. ....
Obligee

vs. ANSWER TO WAGE ASSIGNMENT ORDER
.....
Obligor

.....
Employer

1. At the time of the service of the wage assignment order on the employer, was the above-named obligor employed by or receiving earnings or other remuneration for employment from the employer?

Yes ..... No ..... (check one).

2. Are there any other attachments for child support or spousal maintenance currently in effect against the obligor?

Yes ..... No ..... (check one).

3. If the answer to question one is yes and the employer cannot comply with the wage assignment order, provide an explanation:

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

.....
Signature of employer Date and place

.....
Signature of person answering for employer Address for future notice to employer

.....
Connection with employer

Sec. 11. RCW 26.18.140 and 1991 c 367 s 22 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in a hearing to quash, modify, or terminate the wage assignment order, the court may grant

relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfaction by the obligor of all past due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's support or spousal maintenance obligation is current, the court may terminate the order upon motion of the obligor unless the obligee can show good cause as to why the wage assignment order should remain in effect.

(2) The court may enter an order delaying, modifying, or terminating the wage assignment order and order the obligor to make payments directly to the obligee if the court approves an alternate payment plan as provided in RCW 26.23.050(2).

**Sec. 12.** RCW 26.18.150 and 1984 c 260 s 15 are each amended to read as follows:

(1) In any action to enforce a support or spousal maintenance order under Title 26 RCW, the court may, in its discretion, order a parent obligated to pay support for a minor child or person owing a duty of spousal maintenance to post a bond or other security with the court. The bond or other security shall be in the amount of support or spousal maintenance due for a two-year period. The bond or other security is subject to approval by the court. The bond shall include the name and address of the issuer. If the bond is canceled, any person issuing a bond under this section shall notify the court and the person entitled to receive payment under the order.

(2) If the (~~parent obligated to pay support~~) obligor fails to make payments as required under the court order, the person entitled to receive payment may recover on the bond or other security in the existing proceeding. The court may, after notice and hearing, increase the amount of the bond or other security. Failure to comply with the court's order to obtain and maintain a bond or other security may be treated as contempt of court.

**Sec. 13.** RCW 26.18.160 and 1984 c 260 s 25 are each amended to read as follows:

In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

**Sec. 14.** RCW 26.18.170 and 1989 c 416 s 5 are each amended to read as follows:

(1) Whenever an obligor parent who has been ordered to provide health insurance coverage for a dependent child fails to provide such coverage or lets it lapse, the department or the obligee may seek enforcement of the coverage order as provided under this section.

(2)(a) If the obligor parent's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage may result in direct enforcement of the order and orders payments through, or has been submitted to, the Washington state support registry for enforcement, then the department may, without further notice to the obligor, send a notice of enrollment to the obligor's employer or union by certified mail, return receipt requested.

The notice shall require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(b) If the obligor parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the Washington state support registry for enforcement:

(i) The obligee may, without further notice to the obligor send a certified copy of the order requiring health insurance coverage to the obligor's employer or union by certified mail, return receipt requested; and

(ii) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(3) Upon receipt of an order that provides for health insurance coverage, or a notice of enrollment:

(a) The obligor's employer or union shall answer the party who sent the order or notice within thirty-five days and confirm that the child:

(i) Has been enrolled in the health insurance plan;

(ii) Will be enrolled in the next open enrollment period; or

(iii) Cannot be covered, stating the reasons why such coverage cannot be provided;

(b) The employer or union shall withhold any required premium from the obligor's income or wages;

(c) If more than one plan is offered by the employer or union, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;

(d) The employer or union shall provide information about the name of the health insurance coverage provider or insurer and the extent of coverage available to the obligee or the department and shall make available any necessary claim forms or enrollment membership cards.

(4) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage may result in direct enforcement of the order, the department or the obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for within twenty days of service of the notice, or

within twenty days of coverage becoming available the department or the obligee may proceed to enforce the order directly as provided in subsection (2) of this section.

(5) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department or the obligee may serve a written notice of intent to purchase health insurance coverage on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(6) If the department serves a notice under subsection (5) of this section the obligor shall, within twenty days of the date of service:

(a) File an application for an adjudicative proceeding; or

(b) Provide written proof to the department that the obligor has either applied for, or obtained, coverage accessible to the child.

(7) If the obligee serves a notice under subsection (5) of this section, within twenty days of the date of service the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(8) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may purchase the health insurance coverage specified in the notice directly. The amount of the monthly premium shall be added to the support debt and be collectible without further notice. The amount of the monthly premium may be collected or accrued until the obligor provides proof of the required coverage.

(9) The signature of the obligee or of a department employee shall be a valid authorization to the coverage provider or insurer for purposes of processing a payment to the child's health services provider. An order for health insurance coverage shall operate as an assignment of all benefit rights to the obligee or to the child's health services provider, and in any claim against the coverage provider or insurer, the obligee or the obligee's assignee shall be subrogated to the rights of the obligor. Notwithstanding the provisions of this section regarding assignment of benefits, this section shall not require a health care service contractor authorized under chapter 48.44 RCW or a health maintenance organization authorized under chapter 48.46 RCW to deviate from their contractual provisions and restrictions regarding reimbursement for covered services. If the coverage is terminated, the employer shall mail a notice of termination to the department or the obligee at the obligee's last known address within thirty days of the termination date.

(10) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in superior court at any time to enforce, modify, or clarify the original support order.

(11) Nothing in this section shall be construed to require a health maintenance organization, or health care service contractor, to extend coverage to a child who resides outside its service area.



(12) If an obligor fails to pay his or her portion of any deductible required under the health insurance coverage or fails to pay his or her portion of medical expenses incurred in excess of the coverage provided under the plan, the department or the obligee may enforce collection of the obligor's portion of the deductible or the additional medical expenses through a wage assignment order. The amount of the deductible or additional medical expenses shall be added to the support debt and be collectible without further notice if the obligor's share of the amount of the deductible or additional expenses is reduced to a sum certain in a court order.

Passed the House March 12, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 427

[Substitute House Bill 1931] ·

### COMMERCIAL FERRY OPERATIONS—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to regulation of steamboat operators; amending RCW 47.60.120, 81.84.010, 81.84.020, 81.84.030, 81.84.050, 81.04.010, and 81.24.030; adding new sections to chapter 81.84 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 47.60.120 and 1984 c 7 s 307 are each amended to read as follows:

(1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on

transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

~~((While any revenue bonds issued by the department under the provisions of this chapter are outstanding no additional bonds may be issued for the purposes of acquiring, constructing, operating, or maintaining any ferries or toll bridges within the aforesaid ten mile distance by the department unless the revenues of any such additional ferries or toll bridges are pledged to the bonds then outstanding to the extent provided by the resolution authorizing the issue of the outstanding bonds. The provisions of this section are binding upon the state, and all of its departments, agencies, and instrumentalities, as well as any and all private, political, municipal, and public corporations and subdivisions, including cities, towns, counties, and other political subdivisions, and the prohibitions of this section shall restrict and limit the powers of the legislature of the state in respect to the matters herein mentioned so long as any of such bonds are outstanding and unpaid and shall be deemed to constitute a contract to that effect for the benefit of the holders of all such bonds.))~~

Sec. 2. RCW 81.84.010 and 1961 c 14 s 81.84.010 are each amended to read as follows:

(1) No ((steamboat company shall)) commercial ferry may hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued before or after the effective date of this act to a commercial ferry operator shall be exercised by the operator in a manner consistent with the conditions established in the certificate or tariffs: PROVIDED, That no certificate shall be required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers and/or vehicles, are not more than ten percent of the total gross annual earnings of such vessel: PROVIDED, That nothing herein shall be construed to affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person,

firm, or corporation, ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, provided such operation is not over the same route or between the same districts, being served by a certificate ((~~carrier~~)) holder without first acquiring the rights granted to the certificate holder under the certificate, nor shall this chapter be construed to affect, amend, or invalidate any contract entered into prior to January 15, 1927, for the operation of ferries or boats upon the waters within this state, which was entered into in good faith by any county with any person, firm, or corporation, except that in case of the operation or maintenance by any county, city, town, port district, or other political subdivision by contract, agreement, or lease with any person, firm, or corporation, of ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, the commission shall have power and authority to regulate rates and services of such operation or maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend said rates, and to regulate service and safety of operations thereof, in the manner and to the same extent as it is empowered to regulate a ((~~steamboat company~~)) commercial ferry, notwithstanding the provisions of any act or parts of acts inconsistent herewith.

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. However, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.

(3) The commission shall review certificates in existence as of the effective date of this act, where service is not being provided on all or any portion of the route or routes certificated. Based on progress reports required under subsection (2) of this section, the commission may grant an extension beyond that provided in subsection (2) of this section. Such additional extension may not exceed a total of two years.

Sec. 3. RCW 81.84.020 and 1961 c 14 s 81.84.020 are each amended to read as follows:

(1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities and counties, and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power

to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder (~~shall fail and refuse~~) has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service has elapsed: PROVIDED, A certificate shall be granted when it shall appear to the satisfaction of the commission that (~~such steamboat company~~) the commercial ferry was actually operating in good faith over the route for which such certificate shall be sought, on January 15, 1927: PROVIDED, FURTHER, That in case two or more (~~steamboat companies~~) commercial ferries shall upon said date have been operating vessels upon the same route, or between the same districts the commission shall determine after public hearing whether one or more certificates shall issue, and in determining to whom a certificate or certificates shall be issued, the commission shall consider all material facts and circumstances including the prior operation, schedules, and services rendered by either of (~~said companies~~) the ferries, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the (~~companies to whom such~~) ferries to which the certificates are issued to the end that duplication of service be eliminated and public convenience be furthered.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

(3) Subsection (2) of this section does not apply to an application for a certificate that is pending as of the effective date of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 81.84 RCW to read as follows:

The commission, in granting a certificate to operate as a commercial ferry, shall require the operator to first obtain liability and property damage insurance from a company licensed to write liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each vessel or ferry to be used, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person, and not less than one million dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury and property damage by reason of one act of negligence, and not less than fifty thousand dollars for damage to property of any

person other than the insured; or combined bodily injury and property damage liability insurance of not less than one million dollars, and to maintain such liability and property damage insurance or surety bond in force on each vessel or ferry while so used. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect, and failure to do so is cause for revocation of the operator's certificate.

**Sec. 5.** RCW 81.84.030 and 1961 c 14 s 81.84.030 are each amended to read as follows:

No certificate or any right or privilege thereunder held, owned<sub>1</sub> or obtained under the provisions of this chapter shall be sold, assigned, leased, mortgaged<sub>1</sub> or in any manner transferred, either by the act of the parties or by operation of law, except upon authorization by the commission first obtained. ~~((The commission may at any time by its order duly entered after hearing had upon notice to the holder of any certificate hereunder and an opportunity to such holder to be heard, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, if the holder thereof wilfully violates or fails to observe the provisions or conditions of the certificate, or the orders, rules or regulations of the commission, or the provisions of this title.))~~

**Sec. 6.** RCW 81.84.050 and 1961 c 14 s 81.84.050 are each amended to read as follows:

Every ~~((steamboat company))~~ commercial ferry and every officer, agent, or employee of any ~~((steamboat company))~~ commercial ferry who violates or who procures, aids<sub>1</sub> or abets in the violation of any provision of this title, or any order, rule, regulation, or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense<sub>1</sub> and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids<sub>1</sub> or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due.

The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper.

If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or, if application for remission or

mitigation has not been made, within fifteen days after the violator has received notice of the disposition of such application, the attorney general shall bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions except as otherwise herein provided. All penalties recovered by the state under this chapter shall be paid into the state treasury and credited to the public service revolving fund.

**NEW SECTION.** Sec. 7. A new section is added to chapter 81.84 RCW to read as follows:

The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under RCW 81.84.010 (2) or (3), if the commission has considered the progress report information required under RCW 81.84.010 (2) or (3);

(2) Failure of the certificate holder to file an annual report;

(3) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

(4) The violation of any provision of this chapter;

(5) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

(6) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(7) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

(8) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated.

**NEW SECTION.** Sec. 8. A new section is added to chapter 81.84 RCW to read as follows:

The commission may, with or without a hearing, issue temporary certificates to operate under this chapter, but only after it finds that the issuance of the temporary certificate is necessary due to an immediate and urgent need and is otherwise consistent with the public interest. The certificate may be issued for a period of up to one hundred eighty days. The commission may prescribe such special rules and impose special terms and conditions on the granting of the certificate as in its judgment are reasonable and necessary in carrying out this

chapter. The commission shall collect a filing fee, not to exceed two hundred dollars, for each application for a temporary certificate. The commission shall not issue a temporary certificate to operate on a route for which a certificate has been issued or for which an application by another commercial ferry operator is pending.

**Sec. 9.** RCW 81.04.010 and 1991 c 272 s 3 are each amended to read as follows:

As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Corporation" includes a corporation, company, association, or joint stock association.

"Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

"Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

"Person" includes an individual, a firm, or copartnership.

"Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above, or below any street, avenue, road, highway, bridge, or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind used, operated, controlled, or owned by or in connection with any such street railroad, within this state.

"Street railroad company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating, or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, and terminal facilities of every kind used, operated, controlled, or owned by or in connection with any such railroad.

"Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Express company" includes every corporation, company, association, joint stock association, partnership<sub>1</sub> and person, their lessees, trustees<sub>2</sub> or receivers appointed by any court whatsoever, who shall engage in or transact the business of carrying any freight, merchandise<sub>1</sub> or property for hire on the line of any common carrier operated in this state.

"Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, (~~steamboat companies~~) commercial ferries, express companies, car companies, sleeping car companies, freight companies, freight line companies, and every corporation, company, association, joint stock association, partnership<sub>1</sub> and person, their lessees, trustees<sub>2</sub> or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing<sub>2</sub> or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

"Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha<sub>1</sub> or electric motors.

"(~~Steamboat company~~) Commercial ferry" includes every corporation, company, association, joint stock association, partnership<sub>1</sub> and person, their lessees, trustees<sub>2</sub> or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating<sub>1</sub> or managing any vessel over and upon the waters of this state.

"Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage<sub>1</sub> and handling of the property transported, and the transmission of credit.

"Transportation of persons" includes any service in connection with the receiving, carriage<sub>1</sub> and delivery of the person transported and his baggage and all facilities used, or necessary to be used in connection with the safety, comfort<sub>1</sub> and convenience of the person transported.

"Public service company" includes every common carrier.

The term "service" is used in this title in its broadest and most inclusive sense.

**Sec. 10.** RCW 81.24.030 and 1981 c 13 s 5 are each amended to read as follows:

Every (~~steamboat company~~) commercial ferry shall, on or before the first day of April of each year, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue: PROVIDED, That the fee so paid shall in no case be less than five dollars. The percentage rate of gross operating revenue to be paid in any year may be decreased by the commission by general order entered before March 1st of such year.



Passed the House April 24, 1993.  
Passed the Senate April 24, 1993.  
Approved by the Governor May 15, 1993.  
Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 428**

[House Bill 2001]

**HIGH CAPACITY TRANSPORTATION IN BOUNDARY AREAS—VOTER  
APPROVAL REQUIREMENTS**

Effective Date: 7/25/93

AN ACT Relating to transit agencies; and amending RCW 81.104.030 and 81.104.120.

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

**Sec. 1.** RCW 81.104.030 and 1992 c 101 s 20 are each amended to read as follows:

(1) In any county with a population of from two hundred ten thousand to less than one million that is not bordered by a county with a population of one million or more, and in each county with a population of less than two hundred ten thousand, transit agencies may elect to establish high capacity transportation service. Such agencies shall form a regional policy committee with proportional representation based upon population distribution within the designated service area and a representative of the department of transportation, or such agencies may use the designated metropolitan planning organization as the regional policy committee.

Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington.

(2) Transit agencies in counties adjoining state or international boundaries are authorized to participate in the regional high capacity transportation programs of an adjoining state or Canadian province.

**Sec. 2.** RCW 81.104.120 and 1992 c 101 s 24 are each amended to read as follows:

(1) Transit agencies and regional transit authorities may operate or contract for commuter rail service where it is deemed to be a reasonable alternative transit mode. A reasonable alternative is one whose passenger costs per mile, including costs of trackage, equipment, maintenance, operations, and administration are equal to or less than comparable bus, entrained bus, trolley, or personal rapid transit systems.

(2) A county may use funds collected under RCW 81.100.030 or 81.100.060 to contract with one or more transit agencies or regional transit authorities for planning, operation, and maintenance of commuter rail projects which: (a) Are consistent with the regional transportation plan; (b) have met the project planning and oversight requirements of RCW 81.104.100 and 81.104.110; and (c) have been approved by the voters within the service area of each transit agency or regional transit authority participating in the project. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington. The phrase "approved by the voters" includes specific funding authorization for the commuter rail project.

(3) The utilities and transportation commission shall maintain safety responsibility for passenger rail service operating on freight rail lines. Agencies providing passenger rail service on lines other than freight rail lines shall maintain safety responsibility for that service.

Passed the House March 12, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 429

[Engrossed House Bill 2009]

### PARKING AND BUSINESS IMPROVEMENT AREAS—INCLUSION OF MULTI-FAMILY AND MIXED-USED PROJECTS

Effective Date: 7/25/93

AN ACT Relating to parking and business improvement areas; and amending RCW 35.87A.010, 35.87A.020, 35.87A.030, 35.87A.050, 35.87A.060, 35.87A.080, 35.87A.090, 35.87A.100, 35.87A.140, 35.87A.170, 64.34.304, and 64.34.010.

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

**Sec. 1.** RCW 35.87A.010 and 1985 c 128 s 1 are each amended to read as follows:

To aid general economic development and neighborhood revitalization, and to facilitate ~~((merchant and business))~~ the cooperation of merchants, businesses, and residential property owners which assists trade, economic viability, and liveability, the legislature hereby authorizes all counties and all incorporated cities and towns, including unclassified cities and towns operating under special charters:

(1) To establish, after a petition submitted by the operators responsible for 60 percent of the assessments by businesses and multifamily residential or

mixed-use projects within the area, parking and business improvement areas, hereafter referred to as area or areas, for the following purposes:

- (a) The acquisition, construction or maintenance of parking facilities for the benefit of the area;
  - (b) Decoration of any public place in the area;
  - (c) Promotion of public events which are to take place on or in public places in the area;
  - (d) Furnishing of music in any public place in the area;
  - (e) Providing professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area; or
  - (f) Providing maintenance and security for common, public areas.
- (2) To levy special assessments on all businesses and multifamily residential or mixed-use projects within the area and specially benefited by a parking and business improvement area to pay in whole or in part the damages or costs incurred therein as provided in this chapter.

**Sec. 2.** RCW 35.87A.020 and 1971 ex.s. c 45 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Business" (~~as used in this chapter~~) means all types of business, including professions.

(2) "Legislative authority" (~~as used in this chapter~~) means the legislative authority of any city or town including unclassified cities or towns operating under special charters or the legislative authority of any county.

(3) "Multifamily residential or mixed-use project" means any building or buildings containing four or more residential units or a combination of residential and commercial units, whether title to the entire property is held in single or undivided ownership or title to individual units is held by owners who also, directly or indirectly through an association, own real property in common with the other unit owners.

(4) "Residential operator" means the owner or operator of a multifamily residential or mixed-use project if title is held in single or undivided ownership, or, if title is held in a form of common interest ownership, the association of unit owners, condominium association, homeowners association, property owners association, or residential cooperative corporation.

**Sec. 3.** RCW 35.87A.030 and 1971 ex.s. c 45 s 3 are each amended to read as follows:

For the purpose of establishing a parking and business improvement area, an initiation petition may be presented to the legislative authority having jurisdiction of the area in which the proposed parking and business improvement area is to be located or the legislative authority may by resolution initiate a

parking and business improvement area. The initiation petition or resolution shall contain the following:

- (1) A description of the boundaries of the proposed area;
- (2) The proposed uses and projects to which the proposed special assessment revenues shall be put and the total estimated cost thereof;
- (3) The estimated rate of levy of special assessment with a proposed breakdown by class of business and multifamily residential or mixed-use project if such classification is to be used.

The initiating petition shall also contain the signatures of the persons who operate businesses and residential operators in the proposed area which would pay fifty percent of the proposed special assessments.

**Sec. 4.** RCW 35.87A.050 and 1971 ex.s. c 45 s 5 are each amended to read as follows:

Notice of a hearing held under the provisions of this chapter shall be given by:

- (1) One publication of the resolution of intention in a newspaper of general circulation in the city; and
- (2) Mailing a complete copy of the resolution of intention to each business and multifamily residential or mixed-use project in the proposed, or established, area. Publication and mailing shall be completed at least ten days prior to the time of the hearing.

**Sec. 5.** RCW 35.87A.060 and 1971 ex.s. c 45 s 6 are each amended to read as follows:

Whenever a hearing is held under this chapter, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by businesses and residential operators in the proposed area which would pay a majority of the proposed special assessments.

**Sec. 6.** RCW 35.87A.080 and 1985 c 128 s 2 are each amended to read as follows:

For purposes of the special assessments to be imposed pursuant to this chapter, the legislative authority may make a reasonable classification of businesses and multifamily residential or mixed-use projects, giving consideration to various factors such as business and occupation taxes imposed, square footage of the business, number of employees, gross sales, or any other reasonable factor relating to the benefit received, including the degree of benefit received from parking. Whenever it is proposed that a parking and business improvement area provide more than one of the purposes listed in RCW 35.87A.010, special assessments may be imposed in a manner that measures benefit from each of the separate purposes, or any combination of the separate purposes. Special assessments shall be imposed and collected annually, or on another basis specified in the ordinance establishing the parking and business improvement area.

**Sec. 7.** RCW 35.87A.090 and 1971 ex.s. c 45 s 9 are each amended to read as follows:

The special assessments need not be imposed on different classes of business and multifamily residential or mixed-use projects, as determined pursuant to RCW 35.87A.080, on the same basis or the same rate(~~(=PROVIDED, HOWEVER, That)~~). The special assessments imposed for the purpose of the acquisition, construction or maintenance of parking facilities for the benefit of the area shall be imposed on the basis of benefit determined by the legislative authority after giving consideration to the total cost to be recovered from the businesses and multifamily residential or mixed-use projects upon which the special assessment is to be imposed, the total area within the boundaries of the parking and business improvement area, the assessed value of the land and improvements within the area, the total business volume generated within the area and within each business, and such other factors as the legislative authority may find and determine to be a reasonable measure of such benefit.

**Sec. 8.** RCW 35.87A.100 and 1971 ex.s. c 45 s 10 are each amended to read as follows:

If the legislative authority, following the hearing, decides to establish the proposed area, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such area;

(3) The description of the boundaries of such area;

(4) A statement that the businesses and multifamily residential or mixed-use projects in the area established by the ordinance shall be subject to the provisions of the special assessments authorized by RCW 35.87A.010;

(5) The initial or additional rate or levy of special assessment to be imposed with a breakdown by classification of business and multifamily residential or mixed-use project, if such classification is used; and

(6) A statement that a parking and business improvement area has been established.

(7) The uses to which the special assessment revenue shall be put(~~(=PROVIDED, HOWEVER, That such)~~). Uses shall conform to the uses as declared in the initiation petition presented pursuant to RCW 35.87A.030.

**Sec. 9.** RCW 35.87A.140 and 1971 ex.s. c 45 s 14 are each amended to read as follows:

Changes may be made in the rate or additional rate of special assessment as specified in the ordinance establishing the area, by ordinance adopted after a hearing before the legislative authority.

The legislative authority shall adopt a resolution of intention to change the rate or additional rate of special assessment at least fifteen days prior to the

hearing required by this section. This resolution shall specify the proposed change and shall give the time and place of the hearing(~~((:PROVIDED, That))~~). Proceedings to change the rate or impose an additional rate of special assessments shall terminate if protest is made by businesses or multifamily residential or mixed-use projects in the proposed area which would pay a majority of the proposed increase or additional special assessments.

**Sec. 10.** RCW 35.87A.170 and 1971 ex.s. c 45 s 17 are each amended to read as follows:

Businesses or multifamily residential or mixed-use projects established after the creation of an area within the area may be exempted from the special assessments imposed pursuant to this chapter for a period not exceeding one year from the date they commenced business in the area.

**Sec. 11.** RCW 64.34.304 and 1990 c 166 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;
- (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(~~((+0))~~)(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration

or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Exercise any other powers conferred by the declaration or bylaws;

~~((p))~~ (q) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

~~((q))~~ (r) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

**Sec. 12.** RCW 64.34.010 and 1992 c 220 s 1 are each amended to read as follows:

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.212 (description of units), RCW 64.34.304- (1)(a) through (f) and (k) through ~~((q))~~ (r) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or

supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium.

Passed the House March 15, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 430

[Substitute House Bill 2023]

### STATE HIGHWAY SYSTEM REVISIONS

Effective Date: 7/25/93

AN ACT Relating to jurisdiction over certain roads and highways; amending RCW 47.17.001, 47.17.305, 47.17.577, 47.39.020, 47.42.020, 47.42.100, and 47.42.140; adding new sections to chapter 47.17 RCW; adding a new section to chapter 47.39 RCW; creating a new section; and repealing RCW 47.17.565.

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

**Sec. 1.** RCW 47.17.001 and 1990 c 233 s 1 are each amended to read as follows:



In considering whether to make additions, deletions, or other changes to the state highway system, the legislature shall be guided by the following criteria as contained in the Road Jurisdiction Committee Phase I report to the legislature dated January 1987:

(1) A rural highway route should be designated as a state highway if it meets any of the following criteria:

(a) Is designated as part of the national system of interstate and defense highways (popularly called the interstate system); or

(b) Is designated as part of the system of numbered United States routes; or

(c) Contains an international border crossing that is open twelve or more hours each day.

(2) A rural highway route may be designated as a state highway if it is part of an integrated system of roads and:

(a) Carries in excess of three hundred thousand tons annually and provides primary access to a rural port or intermodal freight terminal;

(b) Provides a major cross-connection between existing state highways;  
(~~(c)~~)

(c) Connects places exhibiting one or more of the following characteristics:

(i) A population center of one thousand or greater;

(ii) An area or aggregation of areas having a population equivalency of one thousand or more, such as, but not limited to, recreation areas, military installations, and so forth;

(iii) A county seat;

(iv) A major commercial-industrial terminal in a rural area with a population equivalency of one thousand or greater; or

(d) Is designated as a scenic and recreational highway.

(3) An urban highway route that meets any of the following criteria should be designated as part of the state highway system:

(a) Is designated as part of the interstate system;

(b) Is designated as part of the system of numbered United States routes;

(c) Is an urban extension of a rural state highway into or through an urban area and is necessary to form an integrated system of state highways;

(d) Is a principal arterial that is a connecting link between two state highways and serves regionally oriented through traffic in urbanized areas with a population of fifty thousand or greater, or is a spur that serves regionally oriented traffic in urbanized areas.

(4) The following guidelines are intended to be used as a basis for interpreting and applying the criteria to specific routes:

(a) For any route wholly within one or more contiguous jurisdictions which would be proposed for transfer to the state highway system under these criteria, if local officials prefer, responsibility will remain at the local level.

(b) State highway routes maintain continuity of the system by being composed of routes that join other state routes at both ends or to arterial routes in the states of Oregon and Idaho and the Province of British Columbia.

(c) Public facilities may be considered to be served if they are within approximately two miles of a state highway.

(d) Exceptions may be made to include:

(i) Rural spurs as state highways if they meet the criteria relative to serving population centers of one thousand or greater population or activity centers with population equivalencies or an aggregated population of one thousand or greater;

(ii) Urban spurs as state highways that provide needed access to Washington state ferry terminals, state parks, major seaports, and trunk airports; and

(iii) Urban connecting links as state highways that function as needed bypass routing of regionally oriented through traffic and benefit truck routing, capacity alternative, business congestion, and geometric deficiencies.

(e) In urban and urbanized areas:

(i) Unless they are significant regional traffic generators, public facilities such as state hospitals, state correction centers, state universities, ferry terminals, and military bases do not constitute a criteria for establishment of a state highway; and

(ii) There may be no more than one parallel nonaccess controlled facility in the same corridor as a freeway or limited access facility as designated by the metropolitan planning organization.

(f) When there is a choice of two or more routes between population centers, the state route designation shall normally be based on the following considerations:

(i) The ability to handle higher traffic volumes;

(ii) The higher ability to accommodate further development or expansion along the existing alignment;

(iii) The most direct route and the lowest travel time;

(iv) The route that serves traffic with the most interstate, state-wide, and interregional significance;

(v) The route that provides the optimal spacing between other state routes; and

(vi) The route that best serves the comprehensive plan for community development in those areas where such a plan has been developed and adopted.

(g) A route designated in chapter 47.39 RCW as a scenic and recreational highway may be designated as a state highway in addition to a parallel state highway route.

**Sec. 2.** RCW 47.17.305 and 1970 ex.s. c 51 s 62 are each amended to read as follows:

A state highway to be known as state route number 160 is established as follows:

Beginning at a junction with state route number 16 in the vicinity ~~((west)) south~~ of Port Orchard, thence ~~((northeasterly by way of Port Orchard to Harper and)) easterly on Sedgwick Road to the Washington state ferry dock at Point Southworth.~~

NEW SECTION. **Sec. 3.** A new section is added to chapter 47.17 RCW to read as follows:

A state highway to be known as state route number 166 is established as follows:

Beginning at a junction with state route number 16 in the vicinity west of Port Orchard, thence northeasterly to the eastern Port Orchard city limits.

NEW SECTION. **Sec. 4.** A new section is added to chapter 47.17 RCW to read as follows:

A state highway to be known as state route number 304 is established as follows:

Beginning at a junction with state route number 3 in Bremerton, thence easterly to the ferry terminal in Bremerton.

**Sec. 5.** RCW 47.17.577 and 1991 c 342 s 31 are each amended to read as follows:

A state highway to be known as state route number 397 is established as follows:

Beginning at ~~((Game Farm))~~ Piert Road in the vicinity southeast of Finely, thence northwesterly and northerly across the Columbia River, thence easterly and northerly to a junction with state route number 395 in Pasco.

NEW SECTION. **Sec. 6.** RCW 47.17.565 and 1970 ex.s. c 51 s 114 are each repealed.

**Sec. 7.** RCW 47.39.020 and 1992 c 26 s 2 are each amended to read as follows:

The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number ~~((106 in the vicinity of Belfair, thence in a northeasterly direction to a junction with Arsenal Way south of Bremerton; also~~

~~Beginning at a junction of Erlands Point Road north of Bremerton thence northeasterly))~~ 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number ~~((8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater))~~ 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(5) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(6) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(7) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(8) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

~~((5))~~ (9) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(10) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

~~((Beginning at the Burlington Northern Railroad bridge approximately 3.4 miles west of Dixie, thence in a northerly and easterly direction by way of Dayton, Dodge, and Pomeroy))~~ Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

~~((6))~~ (11) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, ((thence in an easterly direction by way of Stevenson to a westerly junction with state route number 97 in the vicinity of Maryhill; also

~~Beginning at the easterly junction with state route number 97 in the vicinity of Maryhill;))~~ thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

~~((7))~~ (12) State route number 17, beginning at a junction with state route number 395 in the vicinity of ((Etopia)) Mesa, thence ((in a northwesterly direction to the south end of the overcrossing of state route number 90, in the vicinity of Moses Lake; also

~~Beginning at a junction with Grape Drive in the vicinity of Moses Lake, thence northwesterly and northerly by way of Soap Lake to a junction with state route number 2 west of Coulee City))~~ northerly to the junction with state route number 97 in the vicinity of Brewster;

~~((8))~~ (13) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(14) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence ((easterly and)) northerly and easterly to a junction with ((Rhododendron road in the vicinity east of Coupeville; also

Beginning at a junction with Sherman road in the vicinity west of Coupeville, generally northerly to a junction with Miller road in the vicinity southwest of Oak Harbor; also

Beginning at a junction with Torpedo road in the vicinity northeast of Oak Harbor, thence northerly by way of Deception Pass to a junction with state route number 20 north in the vicinity southeast of Anacortes; also

Beginning at the crossing of Hanson creek approximately 6.0 miles west of Lyman, thence easterly by way of Concrete, Marblemount, Diablo Dam, and Twisp to a junction with)) state route number 153 southeast of Twisp; also

Beginning at a junction with state route number ((21 approximately three miles east of Republic, thence in an easterly direction to a junction with state route number 395 at the west end of the crossing over the Columbia river at Kettle Falls; also

Beginning at a junction with a county road 2.76 miles east of the junction with state route number 395 in Colville, thence in a northeasterly direction to a junction with state route number 31 at Tiger; thence in a southerly direction)) 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

~~((9) State route number 21, beginning at the Keller ferry slip on the north side of Roosevelt lake, thence in a northerly direction to the crossing of Granite creek approximately fifty-four miles north of the Keller ferry;~~

~~((10))~~ (15) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(16) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(17) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(18) State route number 90, beginning at the ((CMSTPP railroad overcrossing approximately 2.3 miles southeast of North Bend, thence in an easterly direction by way of Snoqualmie pass to the crossing of the Cle Elum river approximately 2.6 miles west of Cle Elum)) junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

~~((11))~~ (19) State route number 97, beginning at the ~~((crossing of the Columbia river at Biggs Rapids, thence in a northerly direction to the westerly junction with state route number 14 in the vicinity of Maryhill))~~ Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth;

(20) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

~~((12))~~ (21) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the ((west boundary of the Olympic national park in the vicinity of Lake Crescent; also

Beginning at Sequim Bay state park, thence in a southeasterly and southerly direction to a) junction with ((the Airport road north of Shelton; also

Beginning at a junction with state route number 3 south of Shelton, thence in a southerly and southeasterly direction to the west end of the Black Lake road overcrossing in the vicinity northeast of Tumwater)) state route number 5 in the vicinity of Olympia;

~~((13))~~ (22) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the ~~((vicinity of Shine on Hood Canal; also~~

Beginning at a junction with state route number 3 east of the Hood Canal crossing, thence northeasterly to Port Gamble)) Kingston ferry crossing;

~~((14))~~ (23) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

~~((15)~~ State route number 106, beginning at a junction with state route number 101 in the vicinity of Union, thence northeasterly to a junction with state route number 3 in the vicinity of Belfair;

~~(16))~~ (24) State route number 109, beginning at a junction with ~~((a county road approximately 3.0 miles northwest of the junction with state route number 101 in Hoquiam, thence in a northwesterly direction by way of Ocean City, Copalis, Pacific Beach, and Moelips))~~ state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

~~((47))~~ (25) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

~~((48))~~ (26) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(27) State route number 119, beginning at the junction with state route number 101 at Hoodport, thence northwesterly to the Mount Rose development intersection;

(28) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(29) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(30) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(31) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(32) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(33) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

~~((49))~~ (34) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence ~~((in a northeasterly direction to the boundary of the federal reservation at the Grand Coulee dam;~~ also

Beginning at a junction with a county road 2.07 miles north of the junction with 12th street in Elmer City, thence in a northwesterly direction to the west end of the crossing of Omak creek east of Omak;

~~(20) State route number 206, Mt. Spokane Park Drive, beginning at a junction with state route number 2 near the north line of section 3, township 26 N, range 43 E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park;~~

~~(24)) northerly and westerly to the junction with state route number 215;~~

(35) State route number 194, beginning at the Port of Alмота to the junction with state route number 195 in the vicinity of Pullman;

(36) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(37) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(38) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(39) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(40) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(41) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(42) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

~~(43) State route number 395, beginning at ((a point approximately 2.6 miles north of Pasco thence in a northerly direction to a junction with state route number 17 in the vicinity of Eltopia; also~~

~~Beginning at)) the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;~~

~~((22)) (44) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;~~

~~((23)) (45) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;~~

(46) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(47) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(48) State route number 504, beginning at a junction with state route number 5 ((in the vicinity north of)) at Castle Rock, ((thence in an easterly direction by way of St. Helens and Spirit lake to Mt. St. Helens;

~~(24)) to the end of the route on Johnston Ridge, approximately milepost 52;~~

(49) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;



(50) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(51) State route number 525, beginning at ~~((a junction with Maxwellton road in the southern portion of Whidbey Island, thence northwesterly))~~ the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

~~((25))~~ (52) State route number 542, beginning at the ~~((Nugent crossing over the Nooksack river approximately 7.7 miles northeast of Bellingham))~~ junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

~~((26))~~ (53) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(54) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(55) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(56) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road.

NEW SECTION. **Sec. 8.** Recognizing that the Intermodal Surface Transportation Efficiency Act of 1991 establishes a national "Scenic Byways" grant program and a new apportionment program called "Transportation Enhancement Activities," the department of transportation shall place high priority on obtaining funds from those sources for further development of a scenic and recreational highways program, including highway heritage projects on the designated scenic and recreational highway system. The department shall consider the use of the designated system by bicyclists and pedestrians in connection with nonmotorized routes in the state trail plan, and the state bicycle plan which are also eligible for ISTEA funding. Appropriate signage may be used at intersections of nonmotorized and motorized systems to demonstrate the access, location, and the interconnectivity of various modes of travel for transportation and recreation.

NEW SECTION. **Sec. 9.** A new section is added to chapter 47.39 RCW to read as follows:

In developing the scenic and recreational highways program, the department shall consult with the department of trade and economic development, the department of community development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, regional transportation planning organizations, state-wide bicycling organizations, and other interested parties. The scenic and recreational highways program may

identify entire highway loops or similar tourist routes that could be developed to promote tourist activity and provide concurrent economic growth while protecting the scenic and recreational quality surrounding state highways.

Sec. 10. RCW 47.42.020 and 1991 c 94 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

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

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway, as determined by the department.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

- (a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
- (b) Transient or temporary activities;
- (c) Railroad tracks and minor sidings;
- (d) Signs;
- (e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;
- (f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(11) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place.

**Sec. 11.** RCW 47.42.100 and 1974 ex.s. c 154 s 3 are each amended to read as follows:

(1) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, within a commercial or industrial zone within the boundaries of any city or town, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after March 11, 1965.

(2) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, other than within a commercial or industrial zone within the boundaries of a city or town as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after three years from March 11, 1961.

(3) No sign lawfully erected in a scenic area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to the effective date of the designation of such area as a scenic area shall be maintained by any person after three years from the effective date of the designation of any such area as a scenic area.

(4) No sign visible from the main traveled way of the interstate system, the primary system (other than type 3 signs along any portion of the primary system within an incorporated city or town or within a commercial or industrial area), or the scenic system which was there lawfully maintained immediately prior to May 10, 1971, but which does not comply with the provisions of chapter 47.42 RCW as now or hereafter amended, shall be maintained by any person (a) after three years from May 10, 1971, or (b) with respect to any highway hereafter designated by the legislature as a part of the scenic system, after three years from the effective date of the designation. Signs located in areas zoned by the governing county for predominantly commercial or industrial uses, that do not have development visible to the highway, as determined by the department, and that were lawfully installed after May 10, 1971, visible to any highway now or hereafter designated by the legislature as part of the scenic system, shall be allowed to be maintained.

**Sec. 12.** RCW 47.42.140 and 1992 c 26 s 3 are each amended to read as follows:

The following portions of state highways are designated as a part of the scenic system:

(1) State route number 2 beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin.

(2) State route number 7 beginning at a junction with state route number 706 at Elbe, thence in a northerly direction to a junction with state route number 507 south of Spanaway.

(3) State route number 11 beginning at the Blanchard overcrossing, thence in a northerly direction to the limits of Larabee state park (north line of section 36, township 37 north, range 2 east).

(4) State route number 12 beginning at Kosmos southeast of Morton, thence in an easterly direction across White pass to the Oak Flat junction with state route number 410 northwest of Yakima.

(5) State route number 90 beginning at the westerly junction with West Lake Sammamish parkway in the vicinity of Issaquah, thence in an easterly direction by way of North Bend and Snoqualmie pass to a junction with state route number 970 at Cle Elum.

(6) State route number 97 beginning at a junction with state route number 970 at Viriden, thence via Blewett pass to a junction with state route number 2 in the vicinity of Peshastin.

(7) State route number 106 beginning at the junction with state route number 101 in the vicinity of Union, thence northeasterly to the junction with state route number 3 in the vicinity of Belfair.

(8) State route number 123 beginning at a junction with state route number 12 at Ohanapecosh junction in the vicinity west of White pass, thence in a northerly direction to a junction with state route number 410 at Cayuse junction in the vicinity west of Chinook pass.

~~((8))~~ (9) State route number 165 beginning at the northwest entrance to Mount Rainier national park, thence in a northerly direction to a junction with state route number 162 east of the town of South Prairie.

~~((9))~~ (10) State route number 206, Mt. Spokane Park Drive, beginning at the junction with state route number 2 near the north line section 3, township 26 N, range 43 E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park.

(11) State route number 305, beginning at the ferry slip at Winslow on Bainbridge Island, thence northwesterly by way of Agate Pass bridge to a junction with state route number 3 approximately four miles northwest of Poulsbo.

~~((10))~~ (12) State route number 410 beginning at the crossing of Scatter creek approximately six miles east of Enumclaw, thence in an easterly direction by way of Chinook pass to a junction of state route number 12 and state route number 410.

~~((11))~~ (13) State route number 706 beginning at a junction with state route number 7 at Elbe thence in an easterly direction to the southwest entrance to Mount Rainier national park.

~~((12))~~ (14) State route number 970 beginning at a junction with state route number 90 in the vicinity of Cle Elum thence via Teanaway to a junction with state route number 97 in the vicinity of Virden.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 431

[Senate Bill 5343]

### BOND ISSUE FOR SPECIAL CATEGORY C HIGHWAY IMPROVEMENTS

**Effective Date:** 7/25/93

AN ACT Relating to state highway bonds; and adding new sections to chapter 47.10 RCW.

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

**NEW SECTION.** Sec. 1. In order to provide funds necessary for the location, design, right of way, and construction of state highway improvements that are identified as special category C improvements, there shall be issued and sold upon the request of the Washington state transportation commission a total of two hundred forty million dollars of general obligation bonds of the state of Washington.

**NEW SECTION.** Sec. 2. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by sections 1 through 6 of this act

in accordance with chapter 39.42 RCW. Bonds authorized by sections 1 through 6 of this act shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued.

**NEW SECTION.** Sec. 3. The proceeds from the sale of bonds authorized by sections 1 through 6 of this act shall be deposited in the special category C account in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in section 1 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

**NEW SECTION.** Sec. 4. Bonds issued under the authority of sections 1 through 6 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in sections 1 through 6 of this act from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of sections 1 through 6 of this act, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of sections 1 through 6 of this act.

**NEW SECTION.** Sec. 5. Both principal and interest on the bonds issued for the purposes of sections 1 through 6 of this act shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the special category C account in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by sections 1 through 6 of this act shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle

and special fuels and that is distributed to the special category C account in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the special category C account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the special category C account not required for bond retirement or interest on the bonds.

**NEW SECTION. Sec. 6.** Bonds issued under the authority of sections 1 through 5 of this act and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes.

**NEW SECTION. Sec. 7.** Sections 1 through 6 of this act shall be added to chapter 47.10 RCW.

**NEW SECTION. Sec. 8.** 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 Senate April 16, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 432

[Senate Bill 5371]

### BOND ISSUE FOR INTERSTATE AND OTHER HIGHWAY IMPROVEMENTS

**Effective Date:** 7/25/93

AN ACT Relating to highway bonds; and adding new sections to chapter 47.10 RCW.

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

**NEW SECTION. Sec. 1.** In order to provide funds necessary for the location, design, right of way, and construction of selected interstate and other highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission a total of one hundred million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(1) Not to exceed twenty-five million dollars to pay the state's and local governments' share of matching funds for the ten demonstration projects identified in the Intermodal Surface Transportation Efficiency Act of 1991.

(2) Not to exceed fifty million dollars to temporarily pay the regular federal share of construction in advance of federal-aid apportionments as authorized by this section.

(3) Not to exceed twenty-five million dollars for loans to local governments to provide the required matching funds to take advantage of available federal funds. These loans shall be on such terms and conditions as determined by the Washington state transportation commission, but in no event may the loans be for a period of more than ten years. The interest rate on the loans authorized under this subsection shall be equal to the interest rate on the bonds sold for such purposes.

**NEW SECTION. Sec. 2.** Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by sections 1 through 6 of this act in accordance with chapter 39.42 RCW. Bonds authorized by sections 1 through 6 of this act shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued.

**NEW SECTION. Sec. 3.** The proceeds from the sale of bonds authorized by sections 1 through 6 of this act shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in section 1 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

**NEW SECTION. Sec. 4.** Bonds issued under the authority of sections 1 through 6 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in sections 1 through 6 of this act from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of sections 1 through 6 of this act, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to



pay, when due, the principal and interest on all bonds issued under the authority of sections 1 through 6 of this act.

**NEW SECTION.** Sec. 5. Both principal and interest on the bonds issued for the purposes of sections 1 through 6 of this act shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by sections 1 through 6 of this act shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributed to the state, counties, cities, and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds.

**NEW SECTION.** Sec. 6. Bonds issued under the authority of sections 1 through 5 of this act and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes.

**NEW SECTION.** Sec. 7. Sections 1 through 6 of this act are each added to chapter 47.10 RCW.

**NEW SECTION.** Sec. 8. 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 Senate April 16, 1993.

Passed the House April 17, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 433

[Senate Bill 5375]

### STATE PERSONAL SERVICES CONTRACTS—REVIEW AND ACCOUNTING

Effective Date: 7/25/93

AN ACT Relating to personal service contracts; amending RCW 39.29.003, 39.29.006, and 39.29.018; adding new sections to chapter 39.29 RCW; and adding a new section to chapter 39.80 RCW.

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

**Sec. 1.** RCW 39.29.003 and 1987 c 414 s 1 are each amended to read as follows:

It is the intent of this chapter to establish a policy of open competition for all personal service contracts and subcontracts to personal service contracts entered into by state agencies, unless specifically exempted under this chapter. It is further the intent to provide for legislative and executive review of all personal service contracts (~~(negotiated without an open competitive process)~~), to centralize the location of information about personal service contracts for ease of public review, and ensure proper accounting of personal services expenditures.

**Sec. 2.** RCW 39.29.006 and 1987 c 414 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control

of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.

(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.

(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.380.

(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.

(11) "Subcontract" means a contract assigning some of the work of a contract to a third party.

**NEW SECTION. Sec. 3.** A new section is added to chapter 39.29 RCW to read as follows:

(1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the office of financial management and the legislative budget committee, and are subject to approval by the office of financial management.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the office of financial management and the legislative budget committee.

(3) The office of financial management shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of services under the amendments.

(5) The office of financial management shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the office of financial management.

**NEW SECTION. Sec. 4.** A new section is added to chapter 39.29 RCW to read as follows:

If subcontracts and subcontractors are specified in the contractor's response to a competitive solicitation, this constitutes a competitive solicitation of subcontract services. If subcontracts are authorized, but subcontractors are not specifically identified in a contractor's response to a competitive solicitation and the contractor later desires to issue subcontracts, the subcontracts must comply with the competitive solicitation requirements of this chapter, and selection of subcontractors is subject to prior agency approval.

**Sec. 5.** RCW 39.29.018 and 1987 c 414 s 5 are each amended to read as follows:

(1) Sole source contracts shall be filed with the office of financial management and the legislative budget committee and made available for public inspection at least ten working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management and the legislative budget committee when the contract is filed. For sole source contracts of ten thousand dollars or more that are state funded, documented justification shall include evidence that the agency attempted to identify potential consultants by advertising through state-wide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of ten thousand dollars or more that are state funded, before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than ten thousand dollars if the total amount of such contracts between an agency and the same consultant is ten thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of ten thousand dollars or more are reasonable.

**NEW SECTION. Sec. 6.** A new section is added to chapter 39.29 RCW to read as follows:

Personal services may be procured only to resolve a particular agency problem or issue or to expedite a specific project that is temporary in nature. An agency may procure personal services only if it documents that:

- (1) The service is critical to agency responsibilities or operations, or is mandated or authorized by the legislature;
- (2) Sufficient staffing or expertise is not available within the agency to perform the service; and
- (3) Other qualified public resources are not available to perform the service.

**NEW SECTION.** **Sec. 7.** A new section is added to chapter 39.29 RCW to read as follows:

(1) State-funded personal service contracts subject to competitive solicitation shall be filed with the office of financial management and the legislative budget committee and made available for public inspection at least ten working days before the proposed starting date of the contract.

(2) The office of financial management shall review and approve state-funded personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.

**NEW SECTION.** **Sec. 8.** A new section is added to chapter 39.29 RCW to read as follows:

The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of two thousand five hundred dollars or greater but less than ten thousand dollars; (3) the number and aggregate value of contracts of ten thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts.

**NEW SECTION.** **Sec. 9.** A new section is added to chapter 39.80 RCW to read as follows:

Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial

management on a quarterly basis, in such form as the office of financial management prescribes.

Passed the Senate April 25, 1993.

Passed the House April 25, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 434

[Second Substitute Senate Bill 5511]

### VOTER REGISTRATION BY MAIL

**Effective Date:** 7/25/93 - Except Sections 1 through 9 & 12 which become effective on 1/1/94

AN ACT Relating to voter registration by mail; amending RCW 29.10.180; adding a new chapter to Title 29 RCW; repealing RCW 29.07.040; 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, "by mail" means delivery of a completed original voter registration form by mail, by personal delivery, or by courier to a county auditor.

**NEW SECTION. Sec. 2.** The county auditor is responsible for the conduct of voter registration under this chapter within the county. Except where inconsistent with this chapter, the remaining provisions of Title 29 RCW apply to registration by mail.

**NEW SECTION. Sec. 3.** Any elector of this state may register to vote by mail under this chapter.

**NEW SECTION. Sec. 4.** The county auditor shall distribute forms by which a person may register to vote by mail and cancel any previous registration in this state. The county auditor shall keep a supply of voter registration forms in his or her office at all times for political parties and others interested in assisting in voter registration, and shall make every effort to make these forms generally available to the public. The county auditor shall provide voter registration forms to city and town clerks, state offices, schools, fire stations, and any other locations considered appropriate by the auditor for extending registration opportunities to all areas of the county. After the initial distribution of voter registration forms to a given location, a representative designated by the official in charge of that location shall notify the county auditor of the need for additional voter registration supplies.

**NEW SECTION. Sec. 5.** In addition to the information required under RCW 29.07.070, when registering to vote by mail under this chapter, the applicant shall sign a portion of the form that can be used as an initiative signature card for the verification of petition signatures by the secretary of state and shall sign and attest to the following oath: "I declare that the facts relating

to my qualifications as a voter recorded on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of an infamous crime, I will have lived in this state, county, and precinct thirty days immediately preceding the next election at which I offer to vote, and I will be at least eighteen years of age at the time of voting."

The voter registration by mail form shall provide, in a conspicuous place, the following warning: "Knowingly providing false information on this voter registration form or knowingly making a false declaration about your qualifications for registration is a class C felony punishable by imprisonment for up to five years, or by a fine not to exceed ten thousand dollars, or by both such imprisonment and fine."

**NEW SECTION. Sec. 6.** On receipt of an application for voter registration under this chapter, the county auditor shall review the application to determine whether the information supplied is complete. If it is not, the auditor shall promptly send notice of the deficiency to the applicant. If the information is complete, the applicant is registered as of the date of the application's postmark. If there is no postmark or if the postmark is illegible, the applicant is registered on the date the complete and correct application was received by the auditor. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, a voter registration card identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable.

If a voter registration card is properly mailed as required by this section to the address listed by the applicant as being the applicant's mailing address and the card is subsequently returned to the auditor by the postal service as being undeliverable to the applicant at that address, the auditor shall immediately cancel the voter registration of the applicant. The auditor shall promptly send the applicant a notice and explanation of the cancellation, and a registration application form. The postal service shall be requested to forward this notice as applicable.

**NEW SECTION. Sec. 7.** The secretary of state shall adopt an application form for registering by mail under RCW 29.07.140. An applicant registering to vote by mail shall be required to complete only one form and to provide the required information, other than his or her signature, no more than once. The form shall also contain instructions on its use, a notification of filing deadlines, a warning to the applicant of the penalty for knowingly supplying false information, and space for the county auditor to enter the voter's precinct

identification, taxing district identification, and registration number. The secretary of state shall develop the form in consultation with the county auditors.

**NEW SECTION. Sec. 8.** The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the respective counties. However, costs incurred by the secretary of state during 1994 and 1995 in the printing and distribution of voter registration forms shall be reimbursed by the counties. This cost shall be considered an election cost under RCW 29.13.045 and be prorated as part of the 1994 and 1995 general election costs.

**NEW SECTION. Sec. 9.** Violations of this chapter shall be prosecuted under chapter 29.07 RCW or any other applicable provisions of law.

**Sec. 10.** RCW 29.10.180 and 1991 c 363 s 31 are each amended to read as follows:

(1) The county auditor may enter one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor finds that information received under such a contract gives the appearance that a voter has changed his or her residence address, the auditor shall notify the voter concerning the requirements of state and federal laws governing voter registration and residence.

(2) Whenever any vote-by-mail ballot, notification to voters following reprecincting of the county, notification to voters of selection to serve on jury duty, notification under subsection (1) of this section, or ~~((initial))~~ voter identification card other than a voter identification card issued under section 6 of this act is returned by the postal service as undeliverable, the county auditor shall, in every instance, inquire into the validity of the registration of that voter.

(3) The county auditor shall initiate his or her inquiry by sending, by first-class mail, a written notice to the challenged voter at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter. The county auditor shall not request any restriction on the forwarding of such notice by the postal service. The notice shall contain the nature of the inquiry and provide a suitable form for reply. The notice shall also contain a warning that the county auditor must receive a response within forty-five days from the date of mailing or the individual's voter registration will be canceled.

(4) The voter, in person or in writing, may state that the information on the permanent voter registration record is correct or may request a change in the address information on the permanent registration record no later than the forty-fifth day after the date of mailing the inquiry.

(5) Upon the timely receipt of a response signed by the voter, the county auditor shall consider the inquiry satisfied and will make any address corrections requested by the voter on the permanent registration record. The county auditor shall cancel the registration of a voter who fails to respond to the notice of inquiry within forty-five days after the date of mailing.



(6) The county auditor shall notify any voter whose registration has been canceled by sending, by first class mail, a written notice to the address indicated on the voter's permanent registration record and to any other address to which the original inquiry was sent. Upon receipt of a satisfactory voter response, the auditor shall reinstate the voter.

(7) A voter whose registration has been canceled under this section and who offers to vote at the next ensuing election shall be issued a questioned ballot. Upon receipt of such a questioned ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration shall be immediately reinstated, and the voter's questioned ballot shall be counted. If the original cancellation was not in error, the voter shall be afforded the opportunity to reregister at his or her correct address, and the voter's questioned ballot shall not be counted.

NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act shall constitute a new chapter in Title 29 RCW.

NEW SECTION. **Sec. 12.** RCW 29.07.040 and 1971 ex.s. c 202 s 6 & 1965 c 9 s 29.07.040 are each repealed.

NEW SECTION. **Sec. 13.** Sections 1 through 9 and 12 of this act take effect on January 1, 1994.

Passed the Senate April 20, 1993.

Passed the House April 7, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 435

[Substitute Senate Bill 5528]

SUPERIOR COURT FEES REVISED

Effective Date: 7/25/93

AN ACT Relating to court fees; amending RCW 36.18.020; and adding a new section to chapter 26.12 RCW.

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

**Sec. 1.** RCW 36.18.020 and 1992 c 54 s 1 are each amended to read as follows:

Clerks of superior courts shall collect the following fees for their official services:

(1) The party filing the first or initial paper in any civil action, including an action for restitution, or change of name, shall pay, at the time said paper is filed, a fee of one hundred ten dollars except in proceedings filed under RCW 26.50.030 or 49.60.227 where the petitioner shall pay a filing fee of twenty dollars, or an unlawful detainer action under chapter 59.18 or 59.20 RCW where

the plaintiff shall pay a filing fee of thirty dollars. If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff shall pay, prior to proceeding with the unlawful detainer action, an additional eighty dollars which shall be considered part of the filing fee. The thirty dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(2) Any party, except a defendant in a criminal case, filing the first or initial paper on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when said paper is filed, a fee of one hundred ten dollars.

(3) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district court in the county of issuance, shall pay at the time of filing, a fee of fifteen dollars.

(4) For the filing of a tax warrant by the department of revenue of the state of Washington, a fee of five dollars shall be paid.

(5) For the filing of a petition for modification of a decree of dissolution, a fee of twenty dollars shall be paid.

(6) The party filing a demand for jury of six in a civil action, shall pay, at the time of filing, a fee of fifty dollars; if the demand is for a jury of twelve the fee shall be one hundred dollars. If, after the party files a demand for a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional fifty-dollar fee will be required of the party demanding the increased number of jurors.

(7) For filing any paper, not related to or a part of any proceeding, civil or criminal, or any probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law, or for filing a petition, written agreement, or memorandum as provided in RCW 11.96.170, the clerk shall collect ~~((two))~~ twenty dollars.

(8) For preparing, transcribing or certifying any instrument on file or of record in the clerk's office, with or without seal, for the first page or portion thereof, a fee of two dollars, and for each additional page or portion thereof, a fee of one dollar. For authenticating or exemplifying any instrument, a fee of one dollar for each additional seal affixed.

(9) For executing a certificate, with or without a seal, a fee of two dollars shall be charged.

(10) For each garnishee defendant named in an affidavit for garnishment and for each writ of attachment, a fee of ~~((five))~~ twenty dollars shall be charged.

(11) For approving a bond, including justification thereon, in other than civil actions and probate proceedings, a fee of two dollars shall be charged.

(12) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first paper therein, a fee of one hundred ten dollars: PROVIDED, HOWEVER, A fee of ~~((two))~~ twenty dollars shall be charged for filing a will only, when no probate of the will is contemplated. Except as

provided for in subsection (13) of this section a fee of two dollars shall be charged for filing a petition, written agreement, or memorandum as provided in RCW 11.96.170.

(13) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96.170, there shall be paid a fee of one hundred ten dollars.

(14) For the issuance of each certificate of qualification and each certified copy of letters of administration, letters testamentary or letters of guardianship there shall be a fee of two dollars.

(15) For the preparation of a passport application ~~((there shall be a fee of four dollars))~~ the clerk may collect an execution fee as authorized by the federal government.

(16) For ~~((searching records for which a written report is issued there shall be a fee of eight dollars per hour))~~ clerks' special services such as processing ex parte orders by mail, performing historical searches, compiling statistical reports, and conducting exceptional record searches the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(17) For duplicated recordings of court's proceedings there shall be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape.

~~((17))~~ (18) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of one hundred ten dollars.

~~((18))~~ (19) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972: PROVIDED, That no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

~~((19))~~ (20) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

NEW SECTION. Sec. 2. A new section is added to chapter 26.12 RCW to read as follows:

A county may create a courthouse facilitator program to provide basic services to pro se litigants in family law cases. The legislative authority of any county may impose user fees or may impose a surcharge of up to ten dollars on only those superior court cases filed under Title 26 RCW, or both, to pay for the expenses of the courthouse facilitator program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate account to be used as provided in this section.

Passed the Senate April 20, 1993.  
 Passed the House April 15, 1993.  
 Approved by the Governor May 15, 1993.  
 Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 436**

[Senate Bill 5638]

**PROPERTY TAX VALUATION—CONSISTENCY WITH  
 LAND USE PLAN OR DEVELOPMENT RESTRICTIONS**

**Effective Date:** 7/25/93

AN ACT Relating to taxation of property affected by growth management regulations; and amending RCW 84.40.030.

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

**Sec. 1.** RCW 84.40.030 and 1988 c 222 s 14 are each amended to read as follows:

All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid. Notwithstanding any other provisions of this section or of any other statute, when the value of any taxable leasehold estate created prior to January 1, 1971 is being determined for assessment years prior to the assessment year 1973, there shall be deducted from what would otherwise be the value thereof the present worth of the rentals and other consideration which may be required of the lessee by the lessor for the unexpired term thereof: PROVIDED, That the foregoing provisions of this sentence shall not apply to any extension or renewal, made after December 31, 1970 of the term of any such estate, or to any such estate after the date, if any, provided for in the agreement for rental renegotiation.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall ~~((take into consideration political restrictions such as))~~ be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. The appraisal shall also take into account, (a) in the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing

terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1), consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (2) shall be the dominant factors in valuation. When provisions of this subsection (2) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the value of the land, exclusive of structures thereon shall be determined; also the value of structures thereon, but the valuation shall not exceed the value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

Passed the Senate March 15, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 437

[Engrossed Senate Bill 5720]

### NATURAL RESOURCES CONSERVATION AREAS STEWARDSHIP ACCOUNT ENDOWMENT REPEALED

Effective Date: 7/25/93

AN ACT Relating to natural resources conservation areas; and repealing 1991 c 352 s 10 (uncodified).

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

NEW SECTION. **Sec. 1.** 1991 c 352 s 10 (uncodified) is repealed.

Passed the Senate April 25, 1993.

Passed the House April 18, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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**CHAPTER 438**

[Senate Bill 5856]

**SALE OF WASHINGTON STATE PATROL REAL PROPERTY**

**Effective Date: 7/25/93**

AN ACT Relating to the acquisition and disposition of real property by the Washington state patrol and the department of licensing; and adding a new section to chapter 43.43 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 43.43 RCW to read as follows:

Whenever real property owned by the state of Washington and under the jurisdiction of the Washington state patrol is no longer required, it may be sold at fair market value. All proceeds received from the sale of real property, less any real estate broker commissions, shall be deposited into the state patrol highway account: **PROVIDED**, That if accounts or funds other than the state patrol highway account have contributed to the purchase or improvement of the real property, the office of financial management shall determine the proportional equity of each account or fund in the property and improvements, and shall direct the proceeds to be deposited proportionally therein.

Passed the Senate April 18, 1993.

Passed the House April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

**CHAPTER 439**

[Substitute Senate Bill 5858]

**NO SECURITY REQUIRED FOR ISSUANCE OF**

**BUILDING PERMIT TO GOVERNMENT UNIT**

**Effective Date: 7/25/93**

AN ACT Relating to permits for local government units' building construction projects; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; and adding a new section to chapter 36.32 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 35.21 RCW to read as follows:

A city or town may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or

vehicular access alteration, or other amenities or alterations necessarily associated with the project.

**NEW SECTION. Sec. 2.** A new section is added to chapter 35A.21 RCW to read as follows:

A code city may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project.

**NEW SECTION. Sec. 3.** A new section is added to chapter 36.32 RCW to read as follows:

A county legislative authority may not require any state agency or unit of local government to secure the performance of a permit requirement with a surety bond or other financial security device, including cash or assigned account, as a condition of issuing a permit to that unit of local government for a building construction project.

As used in this section, "building construction project" includes, in addition to its usual meaning, associated landscaping, street alteration, pedestrian or vehicular access alteration, or other amenities or alterations necessarily associated with the project.

Passed the Senate April 18, 1993.

Passed the House April 12, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 440

[Substitute Senate Bill 5969]

### TRANSPORTATION PROJECTS IN URBAN AREAS—ISSUANCE OF BONDS BY TRANSPORTATION IMPROVEMENT BOARD

**Effective Date:** 7/25/93

AN ACT Relating to bond authorization for the transportation improvement board; and adding new sections to chapter 47.26 RCW.

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

**NEW SECTION. Sec. 1.** In order to provide funds necessary to meet the urgent construction needs on state, county, and city transportation projects within urban areas, there are hereby authorized for issuance general obligation bonds of the state of Washington in the sum of fifty million dollars, which shall be issued

and sold in such amounts and at such times as determined to be necessary by the state transportation improvement board. The amount of such bonds issued and sold under the provisions of sections 1 through 8 of this act in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of state, county, and city transportation projects in urban areas. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the state transportation commission on behalf of the transportation improvement board, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the state transportation commission.

NEW SECTION. Sec. 2. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, either or both of which signatures may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest under such rules as the state treasurer may adopt. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments.

NEW SECTION. Sec. 3. The bonds issued under sections 1 through 8 of this act shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. Bonds issued under the provisions of



sections 1 through 8 of this act shall be legal investment for any of the funds of the state, except the permanent school fund.

**NEW SECTION.** **Sec. 4.** The money arising from the sale of the bonds shall be deposited in the state treasury to the credit of the transportation improvement account in the motor vehicle fund, and such money shall be available only for the construction and improvement of state, county, and city transportation projects, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds.

**NEW SECTION.** **Sec. 5.** Bonds issued under the provisions of sections 1 through 8 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on such bonds shall be first payable in the manner provided in sections 1 through 8 of this act from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds.

**NEW SECTION.** **Sec. 6.** Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the transportation improvement account in the motor vehicle fund, and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the transportation improvement account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

**NEW SECTION.** **Sec. 7.** At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of section 6 of this act the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments under sections 1 through 8 of this act when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to section 6 of this act, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly

receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund, maintained in the office of the state treasurer, which fund shall be available for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times.

**NEW SECTION. Sec. 8.** Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period.

**NEW SECTION. Sec. 9.** Sections 1 through 8 of this act are each added to chapter 47.26 RCW.

Passed the Senate April 24, 1993.

Passed the House April 25, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

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## CHAPTER 441

[Senate Bill 5973]

### VOTER REGISTRATION COMPUTER TAPES—AVAILABILITY TO POLITICAL PARTIES AND INDIVIDUALS

Effective Date: 7/1/93

AN ACT Relating to voter registration tapes for political parties; amending RCW 29.04.150 and 29.04.160; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 29.04.150 and 1975-'76 2nd ex.s. c 46 s 2 are each amended to read as follows:

(1) No later than June 15th or November 15th, any political party organization or any other individual may request in writing from the secretary of state to receive a copy of the subsequent state-wide computer file of registered voters compiled under subsection (2) of this section. At the time it makes this request, the political party or individual shall deposit sufficient funds with the secretary of state to pay for the cost of assembling, compiling, and distributing the computer file of registered voters and shall agree to the statutory restrictions regarding the commercial use of this data.

(2) Not earlier than January 1st ~~((nor later than February 1st of each calendar year and not earlier than))~~ or July 1st ~~((nor later than August 1st of each calendar year))~~ subsequent to the receipt of a request and deposit under subsection (1) of this section, each county auditor shall provide to the secretary of state, or a data processing agency designated by ~~((him))~~ the secretary of state, a duplicate computer tape or data file of the records of the registered voters in that county, containing the information specified in RCW 29.07.220. The secretary of state shall reimburse each county for the actual cost of reproduction and mailing of the duplicate computer tape or data file. ~~((He shall arrange for a master computer tape or data file of the records of all the registered voters of the state to be compiled.))~~

Sec. 2. RCW 29.04.160 and 1977 ex.s. c 226 s 1 are each amended to read as follows:

~~((No later than February 15th and no later than August 15th of each year))~~ As soon as any or all of the voter registration data from the counties has been received under RCW 29.04.150 and processed, the secretary of state shall provide a duplicate copy of ~~((the master state wide computer tape or))~~ this data ~~((file of registered voters))~~ to the state central committee ~~((of each major political party))~~ or other individual making the request, at ~~((actual duplication))~~ cost ~~((, and shall provide a duplicate copy of the master state wide computer tape or data file of registered voters to the statute law committee without cost. The master state wide computer tape or data file of registered voters or portions of the tape or file shall be available to any other political party, at actual duplication cost, upon written request to the secretary of state)).~~ Restrictions as to the commercial use of the information on the state-wide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29.04.110 and 29.04.120 as now existing or hereafter amended.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 14, 1993.

Passed the House April 18, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 442

[Senate Bill 5975]

## EXTRADITION AGENTS—DUTIES AND PAYMENT PROCEDURES REVISED

Effective Date: 7/1/93

AN ACT Relating to extradition agents; amending RCW 10.34.030; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 10.34.030 and 1967 c 91 s 2 are each amended to read as follows:

The governor may appoint agents ~~((+))~~ to make a demand upon the executive authority of any state or territory for the surrender of any fugitive from justice, or any other person charged with a felony or any other crime in this state ~~((or (2) to accept the voluntary surrender of any such person who has waived extradition))~~. Whenever an application shall be made to the governor for the appointment of an agent he may require the official submitting the same to provide whatever information is necessary prior to approval of the application.

~~((The accounts of the agents appointed by the governor under this section shall in all cases be paid from the state treasury out of funds appropriated for that purpose upon claims approved by the office of the governor. The office of the governor may prescribe the amounts to be reimbursed to such agents, in the manner in which legislative bodies of political subdivisions of the state may prescribe the amounts to be reimbursed to officers and employees thereof, as set forth in RCW 42.24.090: PROVIDED, That these expenses shall be reasonable, and shall be computed on the basis of actual expenditures incurred, and not on an hourly or per diem basis.))~~

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the Senate April 14, 1993.

Passed the House April 18, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 443

[Engrossed Substitute Senate Bill 5981]

## FOREST PRACTICES PERMITS—APPLICANT FEES AUTHORIZED

Effective Date: 5/15/93

AN ACT Relating to imposing fees for certain forest practices; amending RCW 76.09.010, 76.09.040, 76.09.050, and 76.09.060; adding a new section to chapter 76.09 RCW; and declaring an emergency.

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

**Sec. 1.** RCW 76.09.010 and 1987 c 95 s 1 are each amended to read as follows:

(1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such regulation;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations; and

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and

remedial action to reduce the impact of mass earth movements and fluvial processes.

(4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practice permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources.

**Sec. 2.** RCW 76.09.040 and 1988 c 36 s 46 are each amended to read as follows:

(1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(a) Establish minimum standards for forest practices;

(b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards; (~~and~~)

(c) Set forth necessary administrative provisions; and

(d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter.

Forest practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices regulations. In addition to any forest practices regulations relating to water quality protection proposed by the board, the department of ecology shall prepare proposed forest practices regulations relating to water quality protection.

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fisheries, the department of wildlife, and to the counties of the state. After receipt of the proposed forest practices regulations, the departments of fisheries and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the

department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

**Sec. 3.** RCW 76.09.050 and 1990 1st ex.s. c 17 s 61 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource that may be conducted without submitting an application or a notification;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under section 5 of this act have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, or being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 75.20.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030; or

(d) Excluded from Class II by the board;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under section 5 of this act have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, (b) on lands being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, and/or (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the

department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under section 5 of this act have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) No Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended: PROVIDED, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) If a notification or application is delivered in person to the department by the operator or his agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days:



PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology, wildlife, and fisheries, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) If the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) The department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960; or

(ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b) (i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) In addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) Appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) The department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application

affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) A county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

**Sec. 4.** RCW 76.09.060 and 1992 c 52 s 22 are each amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.17 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;  
 (b) Description of the proposed forest practice or practices to be conducted;  
 (c) Legal description of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources; ~~((and))~~

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a class II forest practice shall indicate whether any land covered by the application or notification will be converted or is intended to be converted to a use other than commercial timber production within three years after completion of the forest practices described in it.

(a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070 as now or hereafter amended;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters ~~((84.28,))~~ 84.33~~((,))~~ and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.

(b) If the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities may deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal ~~((from classification under the provisions of RCW 84.28.065, a removal))~~ of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial timber operations within three years after completion of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application or notification shall be either signed by the landowner or accompanied by a statement signed by the landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) The notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice.

NEW SECTION. Sec. 5. A new section is added to chapter 76.09 RCW to read as follows:

(1) Effective July 1, 1993, an applicant shall pay a fee at the time an application or notification is submitted pursuant to RCW 76.09.060. All money collected from the fees under this section shall be deposited in the state general fund. The fee shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development.

(2) An application fee under subsection (1) of this section shall be refunded or credited to the applicant if either the application is disapproved by the department or the application is withdrawn by the applicant due to restrictions imposed by the department.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 25, 1993.

Passed the House April 24, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

## CHAPTER 444

[Senate Bill 5251]

## SALES TAX—NONRESIDENT EXEMPTION—IDENTIFICATION REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to the nonresident sales tax exemption; and amending RCW 82.08.0273. Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 82.08.0273 and 1988 c 96 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this state when the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as herein provided.

(b) Acceptable proof of a nonresident person's status shall include (~~two pieces~~) one piece of identification (~~(+ (i))~~) such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction (~~(and (ii) a credit card, checks, or other reliable identification)~~). Identification under (~~((i) of)~~) this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax shall be guilty of perjury.

Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, shall be guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(b) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, shall be personally liable for the amount of tax due. Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent shall be guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor shall be liable for any penalties and interest assessable under chapter 82.32 RCW.

Passed the Senate February 24, 1993.  
Passed the House April 24, 1993.  
Approved by the Governor May 17, 1993.  
Filed in Office of Secretary of State May 17, 1993.

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**CHAPTER 445**

[Senate Bill 5828]

**PRIVATE VOCATIONAL SCHOOLS—PAYMENT OF CLAIMS  
AGAINST CLOSED SCHOOLS**

**Effective Date: 7/25/93**

AN ACT Relating to vocational education; amending RCW 28C.10.020, 28C.10.084, 28C.10.120, and 43.84.092; and repealing RCW 28C.10.910.

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

**Sec. 1.** RCW 28C.10.020 and 1991 c 238 s 81 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means the work force training and education coordinating board (~~(or its successor)~~).

(2) "Agent" means a person owning an interest in, employed by, or representing for remuneration a private vocational school within or without this state, who enrolls or personally attempts to secure the enrollment in a private vocational school of a resident of this state, offers to award educational credentials for remuneration on behalf of a private vocational school, or holds himself or herself out to residents of this state as representing a private vocational school for any of these purposes.

(3) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or purport to signify satisfactory completion of an academic program of study beyond the secondary school level.

(4) "Education" includes but is not limited to, any class, course, or program of training, instruction, or study.

(5) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify or appear to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for any educational program.

(6) "Entity" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust.

(7) "Private vocational school" means any location where ~~((there is))~~ an entity is offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession.

(8) "To grant" includes to award, issue, sell, confer, bestow, or give.

(9) "To offer" includes, in addition to its usual meanings, to advertise or publicize. "To offer" also means to solicit or encourage any person, directly or indirectly, to perform the act described.

(10) "To operate" means to establish, keep, or maintain any facility or location where, from, or through which education is offered or educational credentials are offered or granted to residents of this state, and includes contracting for the performance of any such act.

**Sec. 2.** RCW 28C.10.084 and 1990 c 188 s 8 are each amended to read as follows:

(1) The agency shall establish, maintain, and administer a tuition recovery trust fund. All funds collected for the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private vocational school licensed under this chapter, or, in the case of a minor, his or her parents or guardian, for purposes including but not limited to the settlement of claims ~~((procedures))~~ related to school closures under subsection ~~((9))~~ (10) of this section and the settlement of claims under RCW 28C.10.120. The fund shall be liable for settlement of claims and costs of administration but shall not be liable to pay out or recover penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to the state of Washington from claims made against the fund.

(2) By June 30, 1998, a minimum operating balance of one million dollars shall be achieved in the fund and maintained thereafter. If disbursements reduce the operating balance below two hundred thousand dollars at any time before June 30, 1998, or below one million dollars thereafter, each participating entity shall be assessed a pro rata share of the deficiency created, based upon the incremental scale created under subsection (6) of this section. The agency shall adopt schedules of times and amounts for effecting payments of assessment.

~~(3)~~ (3) To be and remain licensed under this chapter each entity shall, in addition to other requirements under this chapter, make cash deposits into a tuition recovery trust fund as a means to assure payment of claims brought under this chapter. ~~((The fund shall be initially capitalized at two hundred thousand dollars and shall achieve an operating balance of at least one million dollars within five years after May 18, 1987, as required under subsection (5) of this section.~~

~~(3))~~ (4) The amount of liability that can be satisfied by this fund on behalf of each individual entity licensed under this chapter shall be established by the agency, based on an incremental scale that recognizes the average amount of unearned prepaid tuition in possession of the entity. However, the minimum amount of liability for any entity shall not be less than five thousand dollars ~~((and the maximum amount shall not exceed two hundred thousand dollars. Such limitation on each entity's liability remains unchanged by single or cumulative disbursements made on behalf of the entity)).~~ The upper limit of liability is reestablished ~~((following the settlement of any claim))~~ after any disbursements are made to settle an individual claim or class of claims.

~~((4))~~ Within sixty days after any entity deposits its initial contribution into the fund, the agency shall release whatever surety such entity had previously filed. Thereupon, the tuition recovery fund shall be liable for a period of one year following the date such surety is released with respect to prior claims against the surety. However, the liability of the fund is limited to the amount of and subject to the defenses of that released surety as though it had remained on file with the agency.)

(5) The fund's liability with respect to each participating entity ~~((that makes an))~~ commences on the date of its initial deposit into the fund ~~((commences on that date))~~ and ceases one year from the date it is no longer licensed under this chapter.

~~((5))~~ (6) The agency shall adopt by rule a matrix for calculating the deposits into the fund required of each entity. Proration shall be determined by factoring the entity's share of liability in proportion to the aggregated liability of all participants under the fund by grouping such prorations under the incremental scale created ~~((in))~~ by subsection ~~((3))~~ (4) of this section. Expressed as a percentage of the total liability, that figure determines the amount to be contributed when factored into a fund containing one million dollars. The total amount of its prorated share, minus the amount paid for initial capitalization, shall be payable in ~~((ten equal))~~ up to twenty increments over a ~~((five))~~ ten-year period, commencing with the sixth month after ~~((May 18, 1987))~~ the entity makes its initial capitalization deposit. Additionally, the agency shall require deposits for initial capitalization, under which the amount each entity deposits is proportionate to its share of two hundred thousand dollars, employing the matrix developed under this subsection. The amount thus established shall be deposited ~~((by each licensee of record, within thirty days after May 18, 1987, and a like amount shall be deposited))~~ by each ~~((subsequent))~~ applicant for initial licensing before the issuance of such license.



~~((6))~~ (7) No vested right or interests in deposited funds is created or implied for the depositor, either at any time during the operation of the fund or at any such future time that the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. The agency shall maintain the fund, ~~((collect deposits when due by serving))~~ serve appropriate notices to affected entities when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the fund. When the aggregated deposits total five million dollars and the history of disbursements ~~((so warrants))~~ justifies such modifications, the agency may at its own option reduce the schedule of deposits whether as to time, amount, or both~~((When such level is achieved,))~~ and the agency may also entertain proposals from among the licensees with regard to disbursing surplus funds for such purposes as vocational scholarships.

~~((7) The agency shall make determinations))~~ (8) Based on annual financial data supplied by the entity the agency shall determine whether the increment assigned to that entity on the incremental scale established under subsection ~~((5))~~ (6) of this section has changed. If an increase or decrease in gross annual tuition income has occurred, a corresponding change in its incremental position and contribution schedule shall be made before the date of its next scheduled deposit into the fund. Such adjustments shall only be calculated and applied annually.

~~((8))~~ (9) No deposits made into the fund by an entity are transferable. If ~~((fifty one percent or more of))~~ the majority ownership interest in an entity is conveyed through sale or other means into different ownership, ~~((the contribution schedule of the prior owner is canceled.))~~ all contributions made to the date of transfer accrue to the fund. The new owner commences contributions under provisions applying to a new applicant.

~~((9))~~ (10) To settle ~~((complaints))~~ claims adjudicated under RCW 28C.10.120 and claims resulting when a private vocational school ceases to provide educational services, the agency may make disbursements from the fund. Students enrolled under a training contract executed between a school and a public or private agency or business are not eligible to make a claim against the fund. In addition to the processes described for making reimbursements related to claims under RCW 28C.10.120 ~~((for handling complaints)),~~ the following ~~((additional))~~ procedures are established to deal with reimbursements related to school closures:

(a) The agency shall attempt to notify all potential claimants. The ~~((absence))~~ unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the agency to ascertain the names and whereabouts of each potential claimant but the agency shall make reasonable inquiries to secure that information from all likely sources. The agency shall then proceed to settle the claims on the basis of information in its possession. The agency is not responsible or liable for claims or for handling claims that may subsequently appear or be discovered.

(b) Thirty days after identified potential claimants have been notified, if a claimant refuses or neglects to file a claim verification as requested in such notice, the agency shall be relieved of further duty or action on behalf of the claimant under this chapter.

(c) After verification and review, the agency may disburse funds from the tuition recovery trust fund to settle or compromise the claims. However, the liability of the fund for claims against the closed entity shall not exceed ~~((that total amount of the contribution schedule))~~ the maximum amount of liability assigned to that entity under subsection ~~((5))~~ (6) of this section.

(d) In the instance of claims against a closed school, the agency shall seek to recover such disbursed funds from the assets of the defaulted entity, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

~~((10))~~ (11) When funds are disbursed to settle claims against a current licensee, the agency shall make demand upon the licensee for recovery. The agency shall adopt schedules of times and amounts ~~((acceptable))~~ for effecting recoveries. An entity's failure to perform subjects its license to suspension or revocation under RCW 28C.10.050 in addition to any other available remedies.

~~((11))~~ A minimum operating balance of two hundred thousand dollars shall be maintained in the fund. If disbursements reduce the balance below two hundred thousand dollars, each participating entity shall be assessed a pro rata share of the deficiency created, based upon the incremental scale created under subsection (5) of this section. The agency shall promptly adopt schedules of times and amounts acceptable for affecting payments of assessments.)

**Sec. 3.** RCW 28C.10.120 and 1990 c 188 s 10 are each amended to read as follows:

(1) Complaints may be filed under this chapter only by a person claiming loss of tuition or fees as a result of an unfair business practice ~~((may file a complaint with the agency))~~. The complaint shall set forth the alleged violation and shall contain information required by the agency on forms provided for that purpose. A complaint may also be filed with the agency by an authorized staff member of the agency or by the attorney general.

(2) The agency shall investigate any complaint under this section and ~~((may))~~ shall first attempt to bring about a negotiated settlement. The agency director or the director's designee may ~~((hold a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW,))~~ conduct an informal hearing with the affected parties in order to determine whether a violation has occurred.

(3) If ~~((, after the hearing,))~~ the agency finds that the private vocational school or its agent engaged in or is engaging in any unfair business practice, the agency shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties provided under RCW 28C.10.130. If the agency finds that the complainant has suffered loss as a result of the act or practice, the agency may order the violator to pay full or partial restitution ~~((for the loss))~~ of any amounts

lost. The loss may include any money paid for tuition, required or recommended course materials, and any reasonable living expenses incurred by the complainant during the time the complainant was enrolled at the school.

(4) The complainant is not bound by the agency's determination of restitution. The complainant may reject that determination and may pursue any other legal remedy.

((4)) (5) The violator may, within twenty days of being served any order described under subsection (3) of this section, file an appeal under the administrative procedure act, chapter 34.05 RCW. Timely filing stays the agency's order during the pendency of the appeal. If the agency prevails ((# any administrative hearing)), the ((private vocational school)) appellant shall pay the costs of the administrative hearing.

**Sec. 4.** RCW 43.84.092 and 1992 c 235 s 4 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the Eastern Washington University capital projects account, the federal forest revolving account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local sales and use tax account, the medical aid account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan I account, the public employees' retirement system plan II account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan I account, the teachers' retirement system plan II account, the tuition recovery

trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' relief and pension principal account, the volunteer fire fighters' relief and pension administrative account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan I retirement account, the Washington law enforcement officers' and fire fighters' system plan II retirement account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (2)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway construction stabilization account, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the special category C account, the state patrol highway account, the transfer relief account, the transportation capital facilities account, the transportation equipment fund, the transportation fund, the transportation improvement account, and the urban arterial trust account.

(3) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 5. RCW 28C.10.910 and 1986 c 299 s 28 are each repealed.

Passed the Senate March 16, 1993.

Passed the House April 22, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

## CHAPTER 446

[Engrossed House Bill 1007]

STATE-WIDE TRANSPORTATION PLANNING DUTIES OF  
DEPARTMENT OF TRANSPORTATION

Effective Date: 7/25/93

AN ACT Relating to state transportation planning; amending RCW 47.05.030; adding a new chapter to Title 47 RCW; and creating a new section.

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

**NEW SECTION.** **Sec. 1. FINDINGS.** The legislature recognizes that the ownership and operation of Washington's transportation system is spread among federal, state, and local government agencies, regional transit agencies, port districts, and the private sector. The legislature also recognizes that transportation planning authority is shared on the local, regional, and state levels, and that this planning must be a comprehensive and coordinated effort. While significant authority for transportation planning is vested with local agencies and regional transportation planning organizations under the growth management act, the legislature recognizes that certain transportation issues and facilities cross local and regional boundaries and are vital to the state-wide economy and the cross-state mobility of people and goods. Therefore, the state has an appropriate role in developing state-wide transportation plans that address state jurisdiction facilities and services as well as transportation facilities and services of state interest. These plans shall serve as a guide for short-term investment needs and provide a long-range vision for transportation system development.

**NEW SECTION.** **Sec. 2. STATE-WIDE TRANSPORTATION PLANNING.** The specific role of the department in transportation planning shall be (1) ongoing coordination and development of state-wide transportation policies that guide all Washington transportation providers; (2) ongoing development of a state-wide multimodal transportation plan that includes both state-owned and state-interest facilities and services; (3) coordinating the state high-capacity transportation planning and regional transportation planning programs; and (4) conducting special transportation planning studies that impact state transportation facilities or relate to transportation facilities and services of state-wide significance. Specific requirements for each of these state transportation planning components are described in this chapter.

**NEW SECTION.** **Sec. 3. TRANSPORTATION POLICY PLAN.** The commission shall develop a state transportation policy plan that (1) establishes a vision and goals for the development of the state-wide transportation system consistent with the state's growth management goals, (2) identifies significant state-wide transportation policy issues, and (3) recommends state-wide transportation policies and strategies to the legislature to fulfill the requirements of RCW 47.01.071(1). The state transportation policy plan shall be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state.

NEW SECTION. **Sec. 4. STATE-WIDE MULTIMODAL TRANSPORTATION PLAN.** The department shall develop a state-wide multimodal transportation plan under RCW 47.01.071(3) and in conformance with federal requirements, to ensure the continued mobility of people and goods within regions and across the state in a safe, cost-effective manner. The state-wide multimodal transportation plan shall consist of:

(1) A state-owned facilities component, which shall guide state investment for state highways including bicycle and pedestrian facilities, and state ferries; and

(2) A state-interest component, which shall define the state interest in aviation, marine ports and navigation, freight rail, intercity passenger rail, bicycle transportation and pedestrian walkways, and public transportation, and recommend actions in coordination with appropriate public and private transportation providers to ensure that the state interest in these transportation modes is met.

The plans developed under each component must be consistent with the state transportation policy plan and with each other, reflect public involvement, be consistent with regional transportation planning, high-capacity transportation planning, and local comprehensive plans prepared under chapter 36.70A RCW, and include analysis of intermodal connections and choices. A primary emphasis for these plans shall be the improvement and integration of all transportation modes to create a seamless intermodal transportation system for people and goods.

NEW SECTION. **Sec. 5. STATE-OWNED FACILITIES COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN.** The state-owned facilities component of the state-wide transportation plan shall consist of:

(1) The state highway system plan, which identifies program and financing needs and recommends specific and financially realistic improvements to preserve the structural integrity of the state highway system, ensure acceptable operating conditions, and provide for enhanced access to scenic, recreational, and cultural resources. The state highway system plan shall contain the following elements:

(a) A system preservation element, which shall establish structural preservation objectives for the state highway system including bridges, identify current and future structural deficiencies based upon analysis of current conditions and projected future deterioration, and recommend program funding levels and specific actions necessary to preserve the structural integrity of the state highway system consistent with adopted objectives. This element shall serve as the basis for the preservation component of the six-year highway program and the two-year biennial budget request to the legislature;

(b) A capacity and operational improvement element, which shall establish operational objectives, including safety considerations, for moving people and goods on the state highway system, identify current and future capacity, operational, and safety deficiencies, and recommend program funding levels and specific improvements and strategies necessary to achieve the operational

objectives. In developing capacity and operational improvement plans the department shall first assess strategies to enhance the operational efficiency of the existing system before recommending system expansion. Strategies to enhance the operational efficiencies include but are not limited to access management, transportation system management, demand management, and high-occupancy vehicle facilities. The capacity and operational improvement element must conform to the state implementation plan for air quality and be consistent with regional transportation plans adopted under chapter 47.80 RCW, and shall serve as the basis for the capacity and operational improvement portions of the six-year highway program and the two-year biennial budget request to the legislature;

(c) A scenic and recreational highways element, which shall identify and recommend designation of scenic and recreational highways, provide for enhanced access to scenic, recreational, and cultural resources associated with designated routes, and recommend a variety of management strategies to protect, preserve, and enhance these resources. The department, affected counties, cities, and towns, regional transportation planning organizations, and other state or federal agencies shall jointly develop this element;

(d) A paths and trails element, which shall identify the needs of nonmotorized transportation modes on the state transportation systems and provide the basis for the investment of state transportation funds in paths and trails, including funding provided under chapter 47.30 RCW.

(2) The state ferry system plan, which shall guide capital and operating investments in the state ferry system. The plan shall establish service objectives for state ferry routes, forecast travel demand for the various markets served in the system, and develop strategies for ferry system investment that consider regional and state-wide vehicle and passenger needs, support local land use plans, and assure that ferry services are fully integrated with other transportation services. The plan shall assess the role of private ferries operating under the authority of the utilities and transportation commission and shall coordinate ferry system capital and operational plans with these private operations. The ferry system plan must be consistent with the regional transportation plans for areas served by the state ferry system, and shall be developed in conjunction with the ferry advisory committees.

**NEW SECTION. Sec. 6. STATE-INTEREST COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN—STATE AVIATION PLAN.** The state-interest component of the state-wide multimodal transportation plan shall include an aviation plan, which shall fulfill the state-wide aviation planning requirements of the federal government, coordinate state-wide aviation planning, and identify the program needs for public use and state airports.

**NEW SECTION. Sec. 7. STATE-INTEREST COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN—STATE MARINE PORTS AND NAVIGATION PLAN.** The state-interest component of the state-

wide multimodal transportation plan shall include a state marine ports and navigation plan, which shall assess the transportation needs of Washington's marine ports, including navigation, and identify transportation system improvements needed to support the international trade and economic development role of Washington's marine ports.

**NEW SECTION. Sec. 8. STATE-INTEREST COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN—STATE FREIGHT RAIL PLAN.** The state-interest component of the state-wide multimodal transportation plan shall include a state freight rail plan, which shall fulfill the state-wide freight rail planning requirements of the federal government, identify freight rail mainline issues, identify light-density freight rail lines threatened with abandonment, establish criteria for determining the importance of preserving the service or line, and recommend priorities for the use of state rail assistance and state rail banking program funds, as well as other available sources of funds. The plan shall also identify existing intercity rail rights of way that should be preserved for future transportation use.

**NEW SECTION. Sec. 9. STATE-INTEREST COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN—STATE INTERCITY PASSENGER RAIL PLAN.** The state-interest component of the state-wide multimodal transportation plan shall include an intercity passenger rail plan, which shall analyze existing intercity passenger rail service and recommend improvements to that service under the state passenger rail service program including depot improvements, potential service extensions, and ways to achieve higher train speeds.

**NEW SECTION. Sec. 10. STATE-INTEREST COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN—STATE BICYCLE TRANSPORTATION AND PEDESTRIAN WALKWAYS PLAN.** The state-interest component of the state-wide multimodal transportation plan shall include a bicycle transportation and pedestrian walkways plan, which shall propose a state-wide strategy for addressing bicycle and pedestrian transportation, including the integration of bicycle and pedestrian pathways with other transportation modes; the coordination between local governments, regional agencies, and the state in the provision of such facilities; the role of such facilities in reducing traffic congestion; and an assessment of state-wide bicycle and pedestrian transportation needs. This plan shall satisfy the federal requirement for a long-range bicycle transportation and pedestrian walkways plan.

**NEW SECTION. Sec. 11. STATE-INTEREST COMPONENT OF STATE-WIDE MULTIMODAL TRANSPORTATION PLAN—STATE PUBLIC TRANSPORTATION PLAN.** The state-interest component of the state-wide multimodal transportation plan shall include a state public transportation plan that:



- (1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;
- (2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;
- (3) Recommends mechanisms for coordinating state, regional, and local planning for public transportation;
- (4) Recommends mechanisms for coordinating public transportation with other transportation services and modes;
- (5) Recommends criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and
- (6) Recommends a state-wide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and private providers of transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community development, social and health services, and ecology, the state energy office, the office of the superintendent of public instruction, the office of the governor, and the office of financial management.

The department shall submit an initial report to the legislative transportation committee by December 1, 1993, and shall provide annual reports summarizing the plan's progress each year thereafter.

**NEW SECTION. Sec. 12. HIGH-CAPACITY TRANSPORTATION PLANNING AND REGIONAL TRANSPORTATION PLANNING—DEPARTMENT OF TRANSPORTATION.** The department's role in high-capacity transportation planning and regional transportation planning is to administer state planning grants for these purposes, represent the interests of the state in these regional planning processes, and coordinate other department planning with these regional efforts, including those under RCW 81.104.060.

**NEW SECTION. Sec. 13. SPECIAL PLANNING STUDIES.** The department may carry out special transportation planning studies to resolve specific issues with the development of the state transportation system or other state-wide transportation issues.

*\*Sec. 14. RCW 47.05.030 and 1987 c 179 s 2 are each amended to read as follows:*

*The transportation commission shall adopt and periodically revise, after consultation with the legislative transportation committee, a comprehensive six-year program and financial plan for highway improvements specifying program objectives for each of the highway categories, "A," "B," "C," and "H," defined in this section, and within the framework of estimated funds for such period. The program and plan shall be based upon the improvement needs ((for state highways as determined by the department from time to time))*

identified in the state highway system plan, as required under section 5 of this act.

*With such reasonable deviations as may be required to effectively utilize the estimated funds and to adjust to unanticipated delays in programmed projects, the commission shall allocate the estimated funds among the following described categories of highway improvements, so as to carry out the commission's program objectives:*

*(1) Category A shall consist of those improvements necessary to sustain the structural, safety, and operational integrity of the existing state highway system (other than improvements to the interstate system to be funded with federal aid at the regular interstate rate under federal law and regulations, and improvements designated in subsections (2) through (4) of this section).*

*(2) Category B shall consist of improvements for the continued development of the interstate system to be funded with federal aid at the regular interstate rate under federal law and regulations.*

*(3) Category C shall consist of the development of major transportation improvements (other than improvements to the interstate system to be funded with federal aid at the regular interstate rate under federal law and regulations) including designated but unconstructed highways which are vital to the state-wide transportation network.*

*(4) Category H shall consist of those improvements necessary to sustain the structural and operational integrity of existing bridges on the highway system (other than bridges on the interstate system or bridge work included in another category because of its association with a highway project in such category).*

*Projects which are financed one hundred percent by federal funds or other agency funds shall, if the commission determines that such work will improve the state highway system, be managed separately from the above categories.*

\*Sec. 14 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 15. CODIFICATION DIRECTIVE. Sections 1 through 13 of this act shall constitute a new chapter in Title 47 RCW.

NEW SECTION. Sec. 16. CAPTIONS. Captions used in this act do not constitute any part of the law.

Passed the House April 20, 1993.

Passed the Senate April 17, 1993.

Approved by the Governor May 17, 1993 exception of certain items which were vetoed.

Filed in Office of Secretary of State May 17, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 14, Engrossed House Bill No. 1007 entitled:

"AN ACT Relating to statewide transportation planning."

This bill defines the Washington State Department of Transportation's role in statewide transportation planning.

Section 14 of the bill, amends RCW 47.05.031, directing that the Transportation Commission's comprehensive six-year program and financial plan for highway improvements be based upon the improvement needs identified in the state-owned facilities component of the Multimodal Transportation Plan created by this legislation. Section 14 is not necessary since the same statute is amended in Substitute Senate Bill No. 5963, an Act Relating To Priority Programming Of Multimodal Solutions To Address State Highway Deficiencies, which also passed the Legislature this session. Substitute Senate Bill No. 5963 spells out in more specific terms how that integration should take place and is the preferred wording for implementation of the intent of both bills.

With the exception of Section 14, Engrossed House Bill No. 1007 is approved."

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## CHAPTER 447

[Engrossed Substitute House Bill 1085]

### COLLEGE AND UNIVERSITY TRANSPORTATION DEMAND MANAGEMENT PROGRAMS

Effective Date: 7/25/93

AN ACT Relating to reducing single-occupancy vehicle travel by students to college campuses; and adding a new chapter to Title 28B RCW.

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

**NEW SECTION.** Sec. 1. Transportation demand management strategies that reduce the number of vehicles on Washington state's highways, roads, and streets, and provide attractive and effective alternatives to single-occupancy travel, can improve ambient air quality, conserve fossil fuels, and forestall the need for capital improvements to the state's transportation system. The legislature has required many public and private employers in the state's largest counties to implement transportation demand management programs to reduce the number of single-occupant vehicle travelers during the morning and evening rush hours, and has provided substantial funding for the University of Washington's UPASS program, which has been immensely successful in its first two years of implementation. The legislature finds that additional transportation demand management strategies are required to mitigate the adverse social, environmental, and economic effects of auto dependency and traffic congestion. While expensive capital improvements, including dedicated busways and commuter rail systems, may be necessary to improve the region's mobility, they are only part of the solution. All public and private entities that attract single-occupant vehicle drivers must develop imaginative and cost-effective ways to encourage walking, bicycling, carpooling, vanpooling, bus riding, and telecommuting. It is the intent of the legislature to revise those portions of state law that inhibit the application of imaginative solutions to the state's transportation mobility problems, and to encourage many more public and private institutions of higher learning to adopt effective transportation demand management strategies.

The legislature finds further that many of the institutions of higher education in the state's largest counties are responsible for significant numbers of single-occupant vehicle trips to and from their campuses. These single-occupant vehicle trips are not only contributing to the degradation of the state's environment and deterioration of its transportation system, but are also usurping parking spaces from surrounding residential communities because existing parking facilities cannot accommodate students' current demand. Therefore, it is the intent of the legislature to permit these institutions to develop and fund transportation demand management programs that reduce single-occupant vehicle travel and promote alternatives to single-occupant vehicle driving. The legislature encourages institutions of higher education to include faculty and staff in their transportation demand management programs.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Transportation fee" means the fee charged to employees and students at institutions of higher education for the purposes provided in section 3 of this act.

(2) "Transportation demand management program" means the set of strategies adopted by an institution of higher education to reduce the number of single-occupant vehicles traveling to its campus. These strategies may include but are not limited to those identified in RCW 70.94.531.

**NEW SECTION. Sec. 3.** The governing board of an institution of higher education as defined in RCW 28B.10.016 may impose either a voluntary or a mandatory transportation fee on employees and on students at the institution. The transportation fee shall be used solely to fund transportation demand management programs that reduce the demand for campus and neighborhood parking, and promote alternatives to single-occupant vehicle driving. If the board charges a mandatory transportation fee to students, it shall charge a mandatory transportation fee to employees. The transportation fee for employees may exceed, but shall not be lower than the transportation fee charged to students. The transportation fee for employees may be deducted from the employees' paychecks. The transportation fee for students may be imposed annually, or each academic term. For students attending community colleges and technical colleges, the mandatory transportation fee shall not exceed sixty percent of the maximum rate permitted for services and activities fees at community colleges, unless, through a vote, a majority of students consent to increase the transportation fee. For students attending four-year institutions of higher education, the mandatory transportation fee shall not exceed thirty-five percent of the maximum rate permitted for services and activities fees at the institution unless, through a vote, a majority of students consents to increase the transportation fee. The board may make a limited number of exceptions to the fee based on a policy adopted by the board.

**NEW SECTION. Sec. 4.** Transportation fees shall be spent only on activities directly related to the institution of higher education's transportation demand management program. These may include, but are not limited to the following activities: Transit, carpool, and vanpool subsidies; ridesharing programs, and program advertising for carpools, vanpools, and transit service; guaranteed ride-home and telecommuting programs; and bicycle storage facilities. Funds may be spent on capital or operating costs incurred in the implementation of any of these strategies, and may be also used to contract with local or regional transit agencies for transportation services. Funds may be used for existing programs if they are incorporated into the campus transportation demand management program.

**NEW SECTION. Sec. 5.** The board of trustees or board of regents of each institution of higher education imposing a transportation fee shall adopt guidelines governing the establishment and funding of transportation demand management programs supported by transportation fees. These guidelines shall establish procedures for budgeting and expending transportation fee revenue.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act shall constitute a new chapter in Title 28B RCW.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

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## CHAPTER 448

[Substitute House Bill 1214]

### MEDICAL RECORDS ACCESS—REVISIONS

Effective Date: 7/1/93

AN ACT Relating to public health; and amending RCW 70.02.010, 70.02.020, 70.02.030, 70.02.050, 70.02.080, 71.05.390, and 71.05.400; adding a new section to chapter 71.05 RCW; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 70.02.010 and 1991 c 335 s 102 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

- (a) Statutory, regulatory, fiscal, medical, or scientific standards;
- (b) A private or public program of payments to a health care provider; or
- (c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, residence, sex, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(12) "Reasonable fee" means the charges for duplicating or searching the records ((specified in RCW 36.18.020 (8) or (16), respectively)), but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(13) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program.

**Sec. 2.** RCW 70.02.020 and 1991 c 335 s 201 are each amended to read as follows:

Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

Health care providers or facilities shall chart all disclosures, except to third-party (~~health care~~) payors, of health care information, such chartings to become part of the health care information.

**Sec. 3.** RCW 70.02.030 and 1991 c 335 s 202 are each amended to read as follows:

(1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider may charge a reasonable fee(~~(, not to exceed the health care provider's actual cost)~~) for providing the health care information(~~(,)~~) and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider shall:

(a) Be in writing, dated, and signed by the patient;

(b) Identify the nature of the information to be disclosed;

(c) Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;

(d) Except for third-party payors, identify the provider who is to make the disclosure; and

(e) Identify the patient.

(4) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(5) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third-party (~~health care~~) payors.

(6) Except for authorizations given pursuant to an agreement with a treatment or monitoring program or disciplinary authority under chapter 18.72 or 18.130 RCW or to provide information to third-party (~~health care~~) payors, an

authorization may not permit the release of health care information relating to future health care that the patient receives more than ninety days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form. If the authorization does not contain an expiration date, it expires ninety days after it is signed.

~~((7) Except for authorizations to provide information to third-party health payors, an authorization in effect on July 28, 1991, remains valid for six months after July 28, 1991, unless an earlier date is specified or it is revoked under RCW 70.02.040. Health care information disclosed under such an authorization is otherwise subject to this chapter. An authorization written after July 28, 1991, becomes invalid after the expiration date contained in the authorization, which may not exceed ninety days. If the authorization does not contain an expiration date, it expires ninety days after it is signed.))~~

**Sec. 4.** RCW 70.02.050 and 1991 c 335 s 204 are each amended to read as follows:

(1) A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider in writing not to make the disclosure;

(d) To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider to so disclose;

(e) Oral, and made to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider in writing not to make the disclosure;

(f) To a health care provider who is the successor in interest to the health care provider maintaining the health care information;



(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider not to make the disclosure;

(k) In the case of a hospital or health care provider to provide, in cases reported by fire, police, sheriff, or other public authority, name, residence, sex, age, occupation, condition, diagnosis, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

**Sec. 5.** RCW 70.02.080 and 1991 c 335 s 301 are each amended to read as follows:

(1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

(a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(b) Inform the patient if the information does not exist or cannot be found;

(c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee (~~(, not to exceed the health care provider's actual cost,)~~) for providing the health care information and is not required to permit examination or copying until the fee is paid.

**Sec. 6.** RCW 71.05.390 and 1990 c 3 s 112 are each amended to read as follows:

The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, (~~(must)~~) shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person, not employed by the facility, who does not have the medical responsibility for the patient's care or who is not a designated county mental health professional or who is not involved in providing services under the community mental health services act, chapter 71.24 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation (~~(and/or)~~) or research, or both: PROVIDED, That the secretary of social and health services adopts rules for the conduct of (~~such~~) the evaluation (~~(and/or)~~) or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent and

convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained(~~(+PROVIDED)~~). However, ((that)) in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(12) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(13) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(14) To the department of health of the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to

chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

**Sec. 7.** RCW 71.05.400 and 1974 ex.s. c 115 s 1 are each amended to read as follows:

(1) A public or private agency shall release to a patient's next of kin, attorney, guardian, or conservator, if any,

(a) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(b) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, guardian, or conservator; and such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(2) Upon the death of a patient, his or her next of kin, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

**NEW SECTION. Sec. 8.** A new section is added to chapter 71.05 RCW to read as follows:

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

**NEW SECTION. Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 23, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

## CHAPTER 449

[House Bill 1218]

## CLAIMS AGAINST LOCAL GOVERNMENTS—PROCEDURE

Effective Date: 7/25/93

AN ACT Relating to claims against local governmental entities; amending RCW 4.96.010, 4.96.020, 36.16.134, 6.17.080, 35.31.020, 35.31.040, 35A.31.030, 36.45.010, 54.16.110, and 87.03.440; adding new sections to chapter 4.96 RCW; creating a new section; recodifying RCW 36.16.134; and repealing RCW 35.31.010, 35.31.030, 36.45.020, 36.45.030, and 53.34.210.

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

NEW SECTION. **Sec. 1.** This act is designed to provide a single, uniform procedure for bringing a claim for damages against a local governmental entity. The existing procedures, contained in chapter 36.45 RCW, counties, chapter 35.31 RCW, cities and towns, chapter 35A.31 RCW, optional municipal code, and chapter 4.96 RCW, other political subdivisions, municipal corporations, and quasi-municipal corporations, are revised and consolidated into chapter 4.96 RCW.

**Sec. 2.** RCW 4.96.010 and 1967 c 164 s 1 are each amended to read as follows:

(1) All ~~((political subdivisions, municipal corporations, and quasi-municipal corporations of the state))~~ local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, ((agents of)) employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation ~~((PROVIDED, That the))~~. Filing a claim for damages within the time allowed by law ~~((of any claim required))~~ shall be a condition precedent to the ~~((maintaining))~~ commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation, or quasi-municipal corporation.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

**Sec. 3.** RCW 4.96.020 and 1967 c 164 s 4 are each amended to read as follows:

(1) ~~((Chapter 35.31 RCW shall apply to claims against cities and towns, and chapter 36.45 RCW shall apply to claims against counties.~~

~~((2))~~ The provisions of this ~~((subsection shall not))~~ section apply to claims for damages against ~~((cities and towns or counties but shall apply to claims against all other political subdivisions, municipal corporations, and quasi-municipal corporations))~~ all local governmental entities.

(2) All claims for damages against any such ((entities)) entity for damages ~~((arising out of tortious conduct))~~ shall be presented to and filed with the

governing body thereof within ~~((one hundred twenty days from the date that the claim arose))~~ the applicable period of limitations within which an action must be commenced.

(3) All ~~((such))~~ claims ~~((shall be verified and shall accurately))~~ for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing ~~((his))~~ the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which ~~((his))~~ the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing ~~((him))~~ the claimant.

(4) No action shall be commenced against any ~~((such))~~ local governmental entity for damages arising out of tortious conduct until ~~((a))~~ sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. ~~((The requirements of this subsection shall not affect the applicable period of limitations within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required))~~ The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

Sec. 4. RCW 36.16.134 and 1989 c 250 s 1 are each amended to read as follows:

(1) Whenever an action or proceeding for damages is brought against any past or present officer ((or)), employee, or volunteer of a ~~((county))~~ local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer ~~((or)), employee, or volunteer~~ may request the ~~((county))~~ local governmental entity to authorize the defense of the action or proceeding at the expense of the ~~((county))~~ local governmental entity.

(2) If the ~~((county))~~ legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer ~~((or)), employee, or volunteer~~ were, or in good faith purported to be, within the scope of his or her official duties, the request ~~((may))~~ shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the ~~((county))~~ local governmental entity. Any monetary judgment against the officer ~~((or)), employee ((may)), or volunteer~~ shall be paid on approval of the ~~((county))~~ legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

(3) The necessary expenses of defending an elective (~~county~~) officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the (~~county~~) local governmental entity if the officer requests such defense and approval is granted by both the (~~county~~) legislative authority of the local governmental entity and the (~~prosecuting~~) attorney representing the local governmental entity. The expenses paid by the (~~county~~) local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

(4) When an officer, employee, or volunteer of the local governmental entity has been represented at the expense of the local governmental entity under subsection (1) of this section and the court hearing the action has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction for nonpunitive damages only from the local governmental entity, and judgment for nonpunitive damages shall not become a lien upon any property of such officer, employee, or volunteer. The legislative authority of a local governmental entity may, pursuant to a procedure created by ordinance or resolution, agree to pay an award for punitive damages.

NEW SECTION. Sec. 5. A new section is added to chapter 4.96 RCW to read as follows:

No bond is required of any local governmental entity for any purpose in any case in any of the courts of the state of Washington and all local governmental entities shall be, on proper showing, entitled to any orders, injunctions, and writs of whatever nature without bond, notwithstanding the provisions of any existing statute requiring that bonds be furnished by private parties.

Sec. 6. RCW 6.17.080 and 1987 c 442 s 408 are each amended to read as follows:

No execution may issue for collection of a judgment for the recovery of money or damages against a (~~county or other public corporation~~) local governmental entity. Any such judgment may be enforced as follows:

(1) The judgment creditor may at any time when execution might issue on a like judgment against a private person, and after acknowledging satisfaction of the judgment as in ordinary cases, obtain from the clerk a certified transcript of the judgment. The clerk shall include in the transcript a copy of the memorandum of acknowledgment of satisfaction and the entry thereof as the basis for an order on the treasurer for payment. Unless the transcript contains such memorandum, no order upon the treasurer shall issue thereon.

(2) The judgment creditor shall present the certified transcript showing satisfaction of the judgment to the officer of the (~~county or other public corporation~~) local governmental entity who is authorized to draw orders on its treasury.



(3) The officer shall draw an order on the treasurer for the amount of the judgment, in favor of the judgment creditor. The order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer. If the proper officer of the ~~((county or other public corporation))~~ local governmental entity fails or refuses to draw the order for payment of the judgment as provided in this section, a writ of mandamus may be issued in the original case to compel performance of the duty.

(4) As used in this section, the term "local governmental entity" means a county, city, town, special district, municipal corporation, or quasi-municipal corporation.

**Sec. 7.** RCW 35.31.020 and 1967 c 164 s 12 are each amended to read as follows:

The provisions of chapter 35.31 RCW shall be applied notwithstanding any provisions to the contrary in any charter of any city permitted by law to have a charter; however, charter provisions not inconsistent herewith shall continue to apply. All claims for damages against a charter city shall be filed ~~((within one hundred and twenty days from the date that the damage occurred or the injury was sustained: PROVIDED, That if the claimant is incapacitated from verifying and filing his claim for damages within the time prescribed, or if the claimant is a minor, or in case the claim is for damages to real or personal property, and if the owner of such property is a nonresident of such city or is absent therefrom during the time within which a claim for damages to said property is required to be filed, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agency representing the injured person, or in case of damages to property, representing the owner thereof))~~ in the manner set forth in chapter 4.96 RCW.

**Sec. 8.** RCW 35.31.040 and 1989 c 74 s 1 are each amended to read as follows:

All claims for damages against noncharter cities and towns ~~((must be presented to the city or town council and filed with the city or town clerk within the period specified in the appropriate statute of limitations))~~ shall be filed in the manner set forth in chapter 4.96 RCW.

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference.

~~((All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when it occurred, give the residence for six months last past of claimant, contain the item of damages claimed and be sworn to by the claimant or a relative, attorney or agent of the claimant.~~

~~No action shall be maintained against any such city or town for any claim for damages until the same has been presented to the council and sixty days have elapsed after such presentation:)~~

**Sec. 9.** RCW 35A.31.030 and 1967 ex.s. c 119 s 35A.31.030 are each amended to read as follows:

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report thereon to the legislative body of the code city pursuant to such reference. ~~((All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when it occurred, contain the item of damages claimed and be verified by the claimant or a relative, attorney, or agent of the claimant:))~~

No action shall be maintained against any code city for any claim for damages until the ~~((same))~~ claim has been ~~((presented to the legislative body of the city by filing with the clerk and sixty days have elapsed after such presentation))~~ filed in the manner set forth in chapter 4.96 RCW.

**Sec. 10.** RCW 36.45.010 and 1967 c 164 s 14 are each amended to read as follows:

All claims for damages against any county ~~((must))~~ shall be ~~((presented before the board of county commissioners and filed with the clerk thereof within one hundred and twenty days from the date that the damage occurred or the injury was sustained))~~ filed in the manner set forth in chapter 4.96 RCW.

**Sec. 11.** RCW 54.16.110 and 1979 ex.s. c 240 s 3 are each amended to read as follows:

A district may sue in any court of competent jurisdiction, and may be sued in the county in which its principal office is located or in which it owns or operates facilities. No suit for damages shall be maintained against a district except on a claim filed with the ~~((commission))~~ district complying in all respects with the terms and requirements for claims for damages ~~((filed against cities of the second class))~~ set forth in chapter 4.96 RCW.

**Sec. 12.** RCW 87.03.440 and 1983 c 167 s 218 are each amended to read as follows:

The treasurer of the county in which is located the office of the district shall be ex officio treasurer of the district, and any county treasurer handling district funds shall be liable upon his or her official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty as county or district treasurer. The treasurer of each county in which lands of the district are located shall collect and receipt for all assessments levied on lands within his or her county. There shall be deposited with the district treasurer all funds of the district. ~~((He))~~ The district treasurer shall pay out such funds upon warrants

issued by the county auditor against the proper funds of the district, except the sums to be paid out of the bond fund for interest and principal payments on bonds: PROVIDED, That in those districts which designate their own treasurer, the treasurer may issue the warrants or any checks when the district is authorized to issue checks. All warrants shall be paid in the order of their issuance. The district treasurer shall report, in writing, on the first Monday in each month to the directors, the amount in each fund, the receipts for the month preceding in each fund, and file the report with the secretary of the board. The secretary shall report to the board, in writing, at the regular meeting in each month, the amount of receipts and expenditures during the preceding month, and file the report in the office of the board.

The preceding paragraph of this section notwithstanding, the board of directors or board of control of an irrigation district which lies in more than one county and which had assessments in each of two of the preceding three years equal to at least five hundred thousand dollars may designate some other person having experience in financial or fiscal matters as treasurer of the district. In addition, the board of directors of an irrigation district which lies entirely within one county may designate some other person having experience in financial or fiscal matters as treasurer of the district if the board has the approval of the county treasurer to designate some other person. If the board designates a treasurer, it shall require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions which it finds from time to time will protect the district against loss. The premium on the bond shall be paid by the district. The designated treasurer shall collect and receipt for all irrigation district assessments on lands within the district and shall act with the same powers and duties and be under the same restrictions as provided by law for county treasurers acting in matters pertaining to irrigation districts, except the powers, duties, and restrictions in RCW 87.56.110 and 87.56.210 which shall continue to be those of county treasurers.

In those districts which have designated their own treasurers, the provisions of law pertaining to irrigation districts which require certain acts to be done and which refer to and involve a county treasurer or the office of a county treasurer or the county officers charged with the collection of irrigation district assessments, except RCW 87.56.110 and 87.56.210 shall be construed to refer to and involve the designated district treasurer or the office of the designated district treasurer.

Any claim against the district for which it is liable under existing laws shall be presented to the board as provided in RCW 4.96.020 and upon allowance it shall be attached to a voucher and approved by the chairman and signed by the secretary and directed to the proper official for payment: PROVIDED, That in the event claimant's claim is for crop damage, the claimant in addition to filing his or her claim within the ~~((one hundred twenty day limit))~~ applicable period of limitations within which an action must be commenced and in the manner specified in RCW 4.96.020 must file with the secretary of the district, or in

~~((his))~~ the secretary's absence one of the directors, not less than three days prior to the severance of the crop alleged to be damaged, a written preliminary notice pertaining to the crop alleged to be damaged. Such preliminary notice, so far as claimant is able, shall advise the district; that the claimant has filed a claim or intends to file a claim against the district for alleged crop damage; shall give the name and present residence of the claimant; shall state the cause of the damage to the crop alleged to be damaged and the estimated amount of damage; and shall accurately locate and describe where the crop alleged to be damaged is located. Such preliminary notice may be given by claimant or by anyone acting in his or her behalf and need not be verified. No action may be commenced against an irrigation district for crop damages unless claimant has complied with the provisions of RCW 4.96.020 and also with the preliminary notice requirements of this section.

NEW SECTION. **Sec. 13.** The following acts or parts of acts are each repealed:

- (1) RCW 35.31.010 and 1967 c 164 s 11 & 1965 c 7 s 35.31.010;
- (2) RCW 35.31.030 and 1965 c 7 s 35.31.030;
- (3) RCW 36.45.020 and 1963 c 4 s 36.45.020;
- (4) RCW 36.45.030 and 1973 c 36 s 1 & 1963 c 4 s 36.45.030; and
- (5) RCW 53.34.210 and 1959 c 236 s 21.

NEW SECTION. **Sec. 14.** RCW 36.16.134 is recodified as a section in chapter 4.96 RCW.

NEW SECTION. **Sec. 15.** 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 March 9, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

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## CHAPTER 450

[House Bill 1346]

### FAMILY LEAVE—REVISIONS

Effective Date: 7/25/93

AN ACT Relating to repealing enforcement and right of action prohibitions for family leave; and repealing RCW 49.78.210.

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

NEW SECTION. **Sec. 1.** RCW 49.78.210 and 1989 1st ex.s. c 11 s 21 are each repealed.

Passed the House March 8, 1993.  
Passed the Senate April 9, 1993.  
Approved by the Governor May 17, 1993.  
Filed in Office of Secretary of State May 17, 1993.

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## CHAPTER 451

[House Bill 1395]

### MARRIAGE LICENSE FEES—ADDITIONAL FEE TO FUND FAMILY SERVICES

Effective Date: 7/25/93

AN ACT Relating to marriage license fees for funding family services; and amending RCW 26.04.160.

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

**Sec. 1.** RCW 26.04.160 and 1985 c 82 s 2 are each amended to read as follows:

(1) Application for ~~((such))~~ a marriage license must be made and filed with the appropriate county auditor upon blanks to be provided by the county auditor for that purpose, which application shall be under the oath of each of the applicants, and each application shall state the name, address at the time of execution of application, age, birthplace, whether single, widowed or divorced, and whether under control of a guardian, residence during the past six months: PROVIDED, That each county may require such other and further information on said application as it shall deem necessary.

(2) The county legislative authority may impose an additional fee up to fifteen dollars on a marriage license for the purpose of funding family services such as family support centers.

Passed the House March 11, 1993.  
Passed the Senate April 16, 1993.  
Approved by the Governor May 17, 1993.  
Filed in Office of Secretary of State May 17, 1993.

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## CHAPTER 452

[House Bill 1444]

### DRIVERS' LICENSES AND IDENTICARDS—IDENTIFICATION REQUIREMENTS TO OBTAIN

Effective Date: 7/25/93

AN ACT Relating to identification requirements for driver's licenses and identicards; amending RCW 46.20.116 and 46.20.117; and adding a new section to chapter 46.20 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.20 RCW to read as follows:

(1) The department may not issue an identicard or a Washington state driver's license, except as provided in RCW 46.20.116, unless the applicant has satisfied the department regarding his or her identity. Except as provided in subsection (2) of this section, an applicant has not satisfied the identity requirements of this section unless he or she displays or provides the department with at least one of the following pieces of valid identifying documentation:

(a) A valid or recently expired driver's license or instruction permit that contains the signature, date of birth, and a photograph of the applicant;

(b) A Washington state identicard or an identification card issued by another state that contains the signature and a photograph of the applicant;

(c) An identification card issued by the United States, a state, or an agency of either the United States or a state, of a kind commonly used to identify the members of employees of the government agency, that contains the signature and a photograph of the applicant;

(d) A military identification card that contains the signature and a photograph of the applicant;

(e) A United States passport that contains the signature and a photograph of the applicant;

(f) An immigration and naturalization service form that contains the signature and photograph of the applicant; or

(g) If the applicant is a minor, an affidavit of the applicant's parent or guardian where the parent or guardian displays or provides at least one piece of identifying documentation as specified in this subsection along with additional documentation establishing the relationship between the parent or guardian and the applicant.

(2) A person unable to provide identifying documentation as specified in subsection (1) of this section may request that the department review other available documentation in order to ascertain identity. The department may waive the requirement for specific identifying documentation under subsection (1) of this section if it finds that other documentation clearly establishes the identity of the applicant.

**Sec. 2.** RCW 46.20.116 and 1969 ex.s. c 155 s 3 are each amended to read as follows:

The department shall plainly label each license "not valid for identification purposes" where the applicant is unable to prove his or her identity (~~commensurate to the regulations adopted by the director~~) as provided in section 1 of this act.

**Sec. 3.** RCW 46.20.117 and 1986 c 15 s 1 are each amended to read as follows:

(1) The department shall issue "identicards," containing a picture, to ~~((individuals))~~ nondrivers for a fee of four dollars. However, the fee shall be the actual cost of production to recipients of continuing public assistance grants under Title 74 RCW who are referred in writing to the department by the

secretary of social and health services. The fee shall be deposited in the highway safety fund. To be eligible, each applicant shall produce evidence as required ~~((by the rules adopted by the director))~~ in section 1 of this act that positively proves identity. The "identocard" shall be distinctly designed so that it will not be confused with the official driver's license. The identocard shall expire on the fifth anniversary of the applicant's birthdate after issuance.

(2) The department may cancel an "identocard" upon a showing by its records or other evidence that the holder of such "identocard" has committed a violation relating to "identocards" defined in RCW 46.20.336.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

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## CHAPTER 453

[House Bill 1490]

### CHILD CARE POLICY OFFICE—DUTIES

Effective Date: 5/17/93

AN ACT Relating to child care; amending RCW 74.13.0903; creating a new section; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a state-wide network. The state-wide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering state-wide strategies, and generates then nurtures effective public-private partnerships. The state-wide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities.

**Sec. 2.** RCW 74.13.0903 and 1991 sp.s. c 16 s 924 are each amended to read as follows:

The office of ~~((the))~~ child care ~~((resources coordinator))~~ policy is established to operate under the authority of the department of social and health services.

The duties and responsibilities of the office ((staff)) include, but are not limited to, the following, within appropriated funds:

(1) Staff and assist the child care coordinating committee in the implementation of its duties under RCW 74.13.090;

(2) Work ((with)) in conjunction with the state-wide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(3) Actively seek public and private money for distribution as grants to ((potential or existing)) the state-wide child care resource and referral network and to existing or potential local child care resource and referral organizations~~((After the 1991-93 fiscal biennium, no grant shall be distributed that is greater than twenty-five thousand dollars))~~;

(4) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care; and

(f) Provide technical assistance to employers regarding employee child care services;

(5) Provide staff support and technical assistance to the state-wide child care resource and referral network and local child care resource and referral organizations;

~~(6) ((Organize the local child care resource and referral organizations into a state-wide system;~~

~~(7))~~ Maintain a state-wide child care ((referral)) licensing data bank and work with department of social and health services licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

~~((8))~~ (7) Through the state-wide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;



~~((9))~~ (8) Coordinate with the state-wide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; and

~~((10))~~ (9) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 12, 1993.

Passed the Senate April 20, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

## CHAPTER 454

[Engrossed Substitute House Bill 1505]

### CONTRACTORS—VERIFICATION OF REGISTRATION REQUIREMENTS

Effective Date: 7/25/93

AN ACT Relating to registration of contractors; amending RCW 18.27.010, 18.27.100, 18.27.102, 18.27.110, 18.27.020, 18.27.200, 18.27.210, 18.27.230, 18.27.310, and 18.27.320; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** The legislature finds that unregistered contractors are a serious threat to the general public and are costing the state millions of dollars each year in lost revenue. To assist in solving this problem, the department of labor and industries and the department of revenue should coordinate and communicate with each other to identify unregistered contractors.

**Sec. 2.** RCW 18.27.010 and 1973 1st ex.s. c 153 s 1 are each amended to read as follows:

~~((A))~~ Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Contractor" ~~((as used in this chapter is))~~ means any person, firm or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith or who installs or repairs roofing or siding; or, who, to do similar work upon his own property, employs

members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein.

~~((A))~~ (2) "General contractor" ((is)) means a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part~~((the term))~~. "General contractor" shall not include an individual who does all work personally without employees or other "specialty contractors" as defined herein. The terms "general contractor" and "builder" are synonymous.

~~((A))~~ (3) "Specialty contractor" ((is)) means a contractor whose operations as such do not fall within the foregoing definition of "general contractor".

(4) "Department" ((as used in this chapter)) means the department of labor and industries.

(5) "Director" ((as used in this chapter)) means the director of the department of labor and industries.

(6) "Verification" means the receipt and duplication by the city, town, or county of a contractor registration card that is current on its face.

**Sec. 3.** RCW 18.27.100 and 1990 c 46 s 1 are each amended to read as follows:

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

(3)(a) The alphabetized listing of contractors appearing in the advertising section of telephone books or other directories and all advertising that shows the contractor's name or address shall show the contractor's current registration number: PROVIDED, That signs on motor vehicles subject to RCW 46.16.010 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A contractor shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required. Advertising by airwave transmission shall not be subject to this subsection if the person selling the advertisement obtains the contractor's current registration number from the contractor.

~~((3))~~ (b) A person selling advertising should not accept advertisements for which the contractor registration number is required under (a) of this subsection if the contractor fails to provide the contractor registration number.

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

~~((4))~~ (5) A contractor shall not falsify a registration number and use it in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

~~((5) Any person who is found to be in)~~ (6)(a) The finding of a violation of this section by the director at a hearing held in accordance with the administrative procedure act, chapter 34.05 RCW, shall ((be required to pay)) subject the person committing the violation to a penalty of not more than five thousand dollars as determined by the director. ((However, the penalty))

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error.

Sec. 4. RCW 18.27.102 and 1987 c 362 s 4 are each amended to read as follows:

When determining a violation of RCW 18.27.100, the director and administrative law judge shall hold responsible the person who purchased or offered to purchase the advertising.

Sec. 5. RCW 18.27.110 and 1986 c 197 s 14 are each amended to read as follows:

(1) No city, town or county shall issue a construction building permit for work which is to be done by any contractor required to be registered under this chapter ((77, Laws of 1963 and chapter 18.27 RCW)) without verification that such contractor is currently registered as required by law. When such verification is made, nothing contained in this section is intended to be, nor shall be construed to create, or form the basis for any liability under this chapter on the part of any city, town or county, or its officers, employees or agents. However, failure to verify the contractor registration number results in liability to the city, town, or county to a penalty to be imposed according to RCW 18.27.100(6)(a).

(2) At the time of issuing the building permit, all cities, towns, or counties are responsible for:

(a) Printing the contractor registration number on the building permit; and

(b) Providing a written notice to the building permit applicant informing them of contractor registration laws and the potential risk and monetary liability to the homeowner for using an unregistered contractor.

(3) If a building permit is obtained by an applicant or contractor who falsifies information to obtain an exemption provided under RCW 18.27.090, the building permit shall be forfeited.

Sec. 6. RCW 18.27.020 and 1987 c 362 s 1 are each amended to read as follows:

(1) Every contractor shall register with the department.

(2) It is a misdemeanor for any contractor ~~((having knowledge of the registration requirements of this chapter))~~ to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended; ((or))

(c) Use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required;  
or

(d) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(3) All misdemeanor actions under this chapter shall be prosecuted in the county where the infraction occurs.

Sec. 7. RCW 18.27.200 and 1983 1st ex.s. c 2 s 1 are each amended to read as follows:

~~((An offer to do work, submission of a bid, or performance of any work by a contractor who is not registered with the department of labor and industries as required by this chapter is an infraction.))~~ (1) It is a violation of this chapter and an infraction for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended; or

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.

Sec. 8. RCW 18.27.210 and 1987 c 419 s 2 are each amended to read as follows:

(1) The director shall appoint compliance inspectors to investigate alleged or apparent violations of this chapter. The director, or authorized compliance inspector, upon presentation of appropriate credentials, may inspect and investigate job sites at which a contractor had bid or presently is working to determine whether the contractor is registered in accordance with this chapter or the rules adopted under this chapter or whether there is a violation of RCW 18.27.200. Upon request of the compliance inspector of the department, a contractor or an employee of the contractor shall provide information identifying the contractor.

(2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee is cited as the agent of the employer-contractor, and issuance of the infraction to the employee is notice to the employer-contractor

that the contractor is in violation of this chapter. An employee who is cited by a compliance inspector shall not be liable for any of the alleged violations contained in the citation unless the employee is also the contractor.

**Sec. 9.** RCW 18.27.230 and 1986 c 197 s 3 are each amended to read as follows:

The department may issue a notice of infraction if the department reasonably believes that the contractor required to be registered by this chapter has failed to do so or has otherwise committed a violation under RCW 18.27.200. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by the department's compliance inspectors or service can be made by certified mail directed to the contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four days of service send a copy of the notice by certified mail to the contractor if the department is able to obtain the contractor's address.

**Sec. 10.** RCW 18.27.310 and 1986 c 197 s 8 are each amended to read as follows:

(1) The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued, the defendant was registered by the department, without suspension, or was exempt from registration.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

**Sec. 11.** RCW 18.27.320 and 1986 c 197 s 9 are each amended to read as follows:

The administrative law judge shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered, without suspension, at the time the notice of infraction was issued.

Passed the House March 9, 1993.  
Passed the Senate April 22, 1993.  
Approved by the Governor May 17, 1993.  
Filed in Office of Secretary of State May 17, 1993.

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**CHAPTER 455**

[Substitute House Bill 1582]

**INSURANCE AGENT-BROKERS—PERMITTED TRANSACTIONS**

**Effective Date: 7/25/93**

AN ACT Relating to permitted transactions by insurance agent-brokers; and amending RCW 48.17.270.

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

**Sec. 1.** RCW 48.17.270 and 1981 c 339 s 13 are each amended to read as follows:

A licensed agent may be licensed as a broker and be a broker as to insurers for which ~~((he))~~ the licensee is not then appointed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing ~~((him-as))~~ such agent. The sole relationship between a broker and an insurer as to which ~~((he))~~ the licensee is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent. In a situation where an insurer has a special arrangement with respect to a particular insurance policy whereby it deals with brokers only, its appointed agents who are also licensed brokers may, with the approval of the insurer, participate in the arrangement and receive a broker's fee therefor, provided there is full disclosure of the facts to the insured or applicant for the insurance.

Passed the House March 8, 1993.  
Passed the Senate April 16, 1993.  
Approved by the Governor May 17, 1993.  
Filed in Office of Secretary of State May 17, 1993.

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**CHAPTER 456**

[Substitute House Bill 1631]

**GOING OUT OF BUSINESS SALES REGULATED**

**Effective Date: 7/25/93**

AN ACT Relating to going out of business sales; adding a new chapter to Title 19 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. Violations of this

chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

**NEW SECTION. Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliated business" means a business or business location that is directly or indirectly controlled by or under common control with the business location or locations listed in the notice of the sale or that has a common ownership interest in the merchandise to be sold with the business location or locations listed in the notice of the sale.

(2) "Going out of business sale" means a sale or auction advertised or held out to the public as the disposal of merchandise in anticipation of cessation of business. This includes but is not limited to a sale or auction advertised or held out to the public as a "going out of business sale," a "closing out sale," a "quitting business sale," a "loss of lease sale," a "must vacate sale," a "liquidation sale," a "bankruptcy sale," a "sale to prevent bankruptcy," or another description suggesting price reduction due to the imminent closure of the business.

(3) "Merchandise" means goods, wares, or other property or services capable of being the object of a sale regulated under this chapter.

(4) "Moving sale" means a sale or auction advertised or held out to the public in anticipation of a relocation of the business to within a thirty-mile radius of its existing location.

(5) "Person" means, where applicable, natural persons, corporations, trusts, unincorporated associations, partnerships, or other legal entities.

**NEW SECTION. Sec. 3.** (1) It is unlawful for a person to sell, offer for sale, or advertise for sale merchandise at a going out of business sale without first recording a notice of the going out of business sale and executing an affidavit of inventory under this chapter.

(2) The notice of the sale must be displayed in a prominent place on the premises where a going out of business sale is being conducted.

(3) Where a going out of business sale is part of a bankruptcy, receivership, or other court-ordered action, a person required by this chapter to record a notice of the sale shall serve a copy of the petition, motion, proposed order, or other pleading requesting court approval of the sale on the attorney general no less than seven days before the date on which an action may be taken related to the conduct of the sale by a court.

**NEW SECTION. Sec. 4.** (1) This chapter shall apply only to persons who engage in the retail sale of merchandise in their regular course of business.

(2) This chapter does not apply to:

(a) Persons acting in accordance with their powers and duties as public officers, such as county sheriffs;

(b) Bulk transfers as defined in RCW 62A.6-102; or

(c) Moving sales, except for section 12(5) of this act.

(3) Going out of business sales of perishable merchandise or merchandise damaged by fire, smoke, or water are exempt from the requirement that the notice of the sale be recorded at least fourteen days before the beginning date of the sale.

NEW SECTION. **Sec. 5.** (1) A person conducting a going out of business sale shall record a notice of the sale with the county auditor at least fourteen days before the beginning date of the sale.

(2) The notice must be signed under oath and acknowledged and must require, and the person signing the notice shall set forth, the following facts and information regarding the sale:

(a) The name, address, telephone number, and Washington state business identification number of the owner of the merchandise to be sold. If the owner is a corporation, trust, unincorporated association, partnership, or other legal entity, the person signing the notice must be an officer of the entity and must identify his or her title;

(b) The name, address, and telephone number of the person who will be in charge and responsible for the conduct of the sale;

(c) The descriptive name, location or locations, and beginning and ending dates of the sale;

(d) Whether a person who has an ownership interest in the business or in the merchandise to be sold has conducted a going out of business sale within one year of recording the notice;

(e) Whether a person who has an ownership interest in the business or in the merchandise to be sold established or acquired an ownership interest in the business within six months of recording the notice; and

(f) A statement that:

(i) The merchandise ordered during the thirty days before recording the notice consists only of bona fide orders made in the usual course of business and does not contain merchandise taken on consignment or otherwise;

(ii) No merchandise transferred from an affiliated business was transferred in contemplation of conducting the sale;

(iii) No merchandise will be ordered, taken on consignment, or transferred from an affiliated business after the notice is recorded or during the sale;

(iv) No person who has an ownership interest in the business or in the merchandise to be sold established or acquired an interest in the business or in the merchandise to be sold solely or principally for the purpose of conducting a going out of business sale;

(v) The business will be discontinued after the ending date of the sale and no merchandise held out for sale will be subsequently offered for sale to the public by anyone who had an ownership interest in the business or in the merchandise offered for sale; and



(vi) No person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under the Consumer Protection Act for a violation of this chapter or the type of conduct prohibited by this chapter.

**NEW SECTION. Sec. 6.** (1) A person conducting a going out of business sale shall, before recording the notice, make either an inventory list of the merchandise to be sold or a compilation of purchase orders issued by the business in the thirty days before recording the notice of the sale.

(2) If a person elects to make an inventory list:

(a) The inventory list must identify the merchandise and include the quantity of each item and the price at which each item was offered for sale within one week of recording the notice;

(b) The inventory list must identify items ordered within thirty days of recording the notice but not yet received by the business;

(c) The inventory list must be permanently attached to an affidavit executed by the person recording the notice of the sale stating that the inventory list is a true and correct inventory of merchandise owned by the business conducting the sale as of the date the affidavit is executed; and

(d) No item may be offered for sale at a going out of business sale unless the item is included in the inventory list for the sale.

(3) If a person elects to make a purchase order compilation, the compilation must be permanently attached to an affidavit executed by the person recording the notice of the sale stating that the compilation is a true and correct compilation of the purchase orders issued by the business in the thirty days before recording the notice of the sale.

(4) The affidavit must be signed under oath and acknowledged before a notary public. Each page of the inventory list or purchase order compilation must be marked in some form by a notary public to verify its identity as part of the inventory list or purchase order compilation for the going out of business sale.

(5) A person conducting a going out of business sale shall maintain possession of the affidavit and attached inventory list or purchase order compilation for three years after the ending date of the sale. The inventory list or purchase order compilation is admissible evidence of compliance or noncompliance with this chapter.

**NEW SECTION. Sec. 7.** (1) No person may conduct a going out of business sale except a person with a valid Washington state business identification number.

(2) No person may conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold established or acquired an ownership interest in the business solely or principally for the purpose of conducting a going out of business sale. A person who has either conducted a going out of business sale within one year or established or acquired

an interest in the business conducting the sale within six months of recording the notice is presumed to have established or acquired an interest in the business solely or principally for the purpose of conducting a going out of business sale.

(3) No person may conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under the Consumer Protection Act for a violation of this chapter or the type of conduct prohibited by this chapter.

**NEW SECTION. Sec. 8.** No person may conduct a going out of business sale for more than sixty days from the beginning date of the sale.

**NEW SECTION. Sec. 9.** (1) No person may sell consigned merchandise or other merchandise not owned by the person signing the notice at a going out of business sale. Merchandise ordered within thirty days of recording the notice of the sale may consist only of bona fide orders made in the usual course of business and may contain no merchandise taken on consignment or otherwise.

(2) No person in contemplation of conducting a going out of business sale may transfer merchandise from an affiliated business or business location to the location or locations of the sale.

(3) No person, after recording the notice of a going out of business sale, may buy or order merchandise, take merchandise on consignment, or receive a transfer of merchandise from an affiliated business or business location for the purpose of selling it at the sale or sell the merchandise in a going out of business sale.

**NEW SECTION. Sec. 10.** (1) No person may continue to conduct a going out of business sale beyond the ending date listed in the notice of the sale.

(2) No person after conducting a going out of business sale may remain in business under any of the same ownership, or under the same or substantially the same trade name, or continue to offer for sale the same type of merchandise for a period of one year after the ending date of the sale unless the continuing business location was in operation before recording the notice for the closing business location.

(3) For the purposes of this section, if a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or other transaction, for the purpose of continuing the business or profiting from the business, the successor entity or individual is considered the same person as the original entity. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, participate in the business, or profit from the business, that entity is considered the same person as the individual.

**NEW SECTION. Sec. 11.** No person may conduct a going out of business sale if any means have been established for continuation of the closing business

location by the same owner, directly or indirectly, by corporation, trust, unincorporated association, partnership, or other legal entity under the same name or under a different name.

**NEW SECTION. Sec. 12.** (1) No person may advertise a going out of business sale more than fourteen days before the beginning date of the sale. All advertising of the sale must state the beginning date and must clearly and prominently state the ending date of the sale. Except as provided in subsection (2) of this section, all advertising must be confined to or refer to the address or addresses and place or places of business specified in the notice as going out of business and may not state that other locations or affiliated businesses are cooperating with or participating in the sale unless the other locations or affiliated businesses are included in the notice.

(2) Advertising broadcast on radio is not required to refer to the address or addresses of the business specified in the notice as going out of business, but must meet all other conditions of this section.

(3) No advertising may contain false, misleading, or deceptive statements regarding the nature, duration, merchandise, or other terms of a going out of business sale.

(4) Representations in advertising regarding price savings or discounts on sale merchandise must be bona fide and substantiated.

(5) A moving sale may not be advertised for more than ninety days and may not occur more than once within a twenty-four month period.

**NEW SECTION. Sec. 13.** A person who knowingly violates this chapter or who knowingly gives false or incorrect information in a notice required by this chapter is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

**NEW SECTION. Sec. 14.** The attorney general or the proper prosecuting attorney may institute proceedings under this chapter.

**NEW SECTION. Sec. 15.** The state of Washington fully occupies and preempts the entire field of regulating going out of business sales.

**NEW SECTION. Sec. 16.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 17.** Sections 1 through 16 of this act shall constitute a new chapter in Title 19 RCW.

Passed the House April 20, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

**CHAPTER 457**

[House Bill 1689]

**IMPERSONATION OF A LAW ENFORCEMENT OFFICER**

**Effective Date:** 7/25/93

AN ACT Relating to impersonation of a law enforcement officer; amending RCW 9A.60.040; and prescribing penalties.

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

**Sec. 1.** RCW 9A.60.040 and 1975 1st ex.s. c 260 s 9A.60.040 are each amended to read as follows:

(1) A person is guilty of criminal impersonation in the first degree if ~~((he))~~ the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a gross misdemeanor.

(3) A person is guilty of criminal impersonation in the second degree if the person:

(a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.

(4) Criminal impersonation in the second degree is a misdemeanor.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

**CHAPTER 458**

[Substitute House Bill 1721]

**LOCAL GOVERNMENT HEALTH AND WELFARE BENEFIT TRUSTS—CREATION OF JOINTLY ADMINISTERED TRUSTS AUTHORIZED**

**Effective Date:** 7/25/93

AN ACT Relating to jointly administered health and welfare benefits trusts; amending RCW 48.62.121; adding a new section to chapter 48.62 RCW; and creating a new section.

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

**Sec. 1.** RCW 48.62.121 and 1991 sp.s. c 30 s 12 are each amended to read as follows:

(1) No employee or official of a local government entity may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute (~~(RCW 49.04.010)~~);

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; or

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of agents and brokers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust.

**NEW SECTION. Sec. 2.** A new section is added to chapter 48.62 RCW to read as follows:

No local government self-insured employee health and welfare benefit program established as a trust by a local government entity or entities prior to the effective date of this act may continue in operation unless such program complies with the provisions of this chapter within one hundred eighty days after the effective date of this act. The state risk manager may extend such period if the risk manager finds that such local government entity or entities are making a good faith effort and taking all necessary steps to comply with this chapter; however, in no event may the risk manager extend the period required for compliance more than ninety days after the expiration of the initial one hundred eighty-day period.

**NEW SECTION. Sec. 3.** If Engrossed Second Substitute Senate Bill No. 5304 is enacted into law, the provisions of chapter 48.62 RCW shall be reviewed to evaluate the extent to which health care trusts provide benefits to certain individuals in the state; and to review the federal laws that may constrain the organization or operation of these joint employee-employer entities. The health services commission shall make appropriate recommendations to the governor and the legislature as to how these trusts can be brought under the provisions of Engrossed Second Substitute Senate Bill No. 5304.

Passed the House April 20, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.

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## CHAPTER 459

[Substitute House Bill 1765]

### MENTALLY ILL OFFENDERS—IMPROVED SERVICES FOR—PLAN DEVELOPMENT

Effective Date: 5/17/93

AN ACT Relating to a corrections mental health center operated through a partnership of the department of corrections and the University of Washington; creating a new section; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** (1) The department of corrections and the University of Washington may enter into a collaborative arrangement to provide improved services for mentally ill offenders with a focus on prevention, treatment, and reintegration into society. The participants in the collaborative

arrangement may develop a strategic plan within sixty days after the effective date of this act to address the management of mentally ill offenders within the correctional system, facilitating their reentry into the community and the mental health system, and preventing the inappropriate incarceration of mentally ill individuals. The collaborative arrangement may also specify the establishment and maintenance of a corrections mental health center located at McNeil Island corrections center. The collaborative arrangement shall require that an advisory panel of key stakeholders be established and consulted throughout the development and implementation of the center. The stakeholders advisory panel shall include a broad array of interest groups drawn from representatives of mental health, criminal justice, and correctional systems. The stakeholders advisory panel shall include, but is not limited to, membership from: The department of corrections, the department of social and health services mental health division and division of juvenile rehabilitation, regional support networks, local and regional law enforcement agencies, the sentencing guidelines commission, county and city jails, mental health advocacy groups for the mentally ill, developmentally disabled, and traumatically brain-injured, and the general public. The center established by the department of corrections and University of Washington, in consultation with the stakeholder advisory groups, shall have the authority to:

(a) Develop new and innovative treatment approaches for corrections mental health clients;

(b) Improve the quality of mental health services within the department and throughout the corrections system;

(c) Facilitate mental health staff recruitment and training to meet departmental, county, and municipal needs;

(d) Expand research activities within the department in the area of treatment services, the design of delivery systems, the development of organizational models, and training for corrections mental health care professionals;

(e) Improve the work environment for correctional employees by developing the skills, knowledge, and understanding of how to work with offenders with special chronic mental health challenges;

(f) Establish a more positive rehabilitative environment for offenders;

(g) Strengthen multidisciplinary mental health collaboration between the University of Washington, other groups committed to the intent of this section, and the department of corrections;

(h) Strengthen department linkages between institutions of higher education, public sector mental health systems, and county and municipal corrections;

(i) Assist in the continued formulation of corrections mental health policies;

(j) Develop innovative and effective recruitment and training programs for correctional personnel working with mentally ill offenders;

(k) Assist in the development of a coordinated continuum of mental health care capable of providing services from corrections entry to community return; and

(1) Evaluate all current and innovative approaches developed within this center in terms of their effective and efficient achievement of improved mental health of inmates, development and utilization of personnel, the impact of these approaches on the functioning of correctional institutions, and the relationship of the corrections system to mental health and criminal justice systems. Specific attention should be paid to evaluating the effects of programs on the reintegration of mentally ill offenders into the community and the prevention of inappropriate incarceration of mentally ill persons.

(2) The corrections mental health center may conduct research, training, and treatment activities for the mentally ill offender within selected sites operated by the department. The department shall provide support services for the center such as food services, maintenance, perimeter security, classification, offender supervision, and living unit functions. The University of Washington may develop, implement, and evaluate the clinical, treatment, research, and evaluation components of the mentally ill offender center. The institute of public policy and management may be consulted regarding the development of the center and in the recommendations regarding public policy. As resources permit, training within the center shall be available to state, county, and municipal agencies requiring the services. Other state colleges, state universities, and mental health providers may be involved in activities as required on a subcontract basis. Community mental health organizations, research groups, and community advocacy groups may be critical components of the center's operations and involved as appropriate to annual objectives. Mentally ill clients may be drawn from throughout the department's population and transferred to the center as clinical need, available services, and department jurisdiction permits.

(3) The department shall prepare a report of the center's progress toward the attainment of stated goals and provide the report to the legislature annually.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 20, 1993.

Passed the Senate April 16, 1993.

Approved by the Governor May 17, 1993.

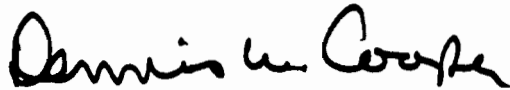
Filed in Office of Secretary of State May 17, 1993.



### AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 1993 regular session (53rd Legislature), chapters 1 through 459, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 25th day of June, 1993.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive, flowing style.

DENNIS W. COOPER  
Code Reviser

